

5
No. 2458

United States
Circuit Court of Appeals

For the Ninth Circuit.

THE NATIONAL BANK OF COMMERCE, a Corporation,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Western District of Washington,
Northern Division.

Filed

SEP 22 1914

F. D. Monckton,
Clerk.

No. 2458

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE NATIONAL BANK OF COMMERCE, a Corporation,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 1933.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NATIONAL BANK OF COMMERCE, a Corporation,

Defendant.

Names and Addresses of Counsel.

J. A. KERR, Esq., Attorney for Defendant and
Plaintiff in Error,

E. S. McCORD, Esq., Attorney for Defendant and
Plaintiff in Error,

1309-1316 Hoge Building, Seattle, Wash-
ington.

CLAY ALLEN, Esq., Attorney for Plaintiff and
Defendant in Error,

G. P. FISHBURNE, Esq., Attorney for Plaintiff
and Defendant in Error,

310 Federal Building, Seattle, Washington.

[1*]

*Page-number appearing at foot of page of original certified Record.

*United States Circuit Court, Western District of
Washington, Northern Division.*

1933.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NATIONAL BANK OF COMMERCE, a Corpo-
ration,

Defendant.

Complaint.

For a cause of action against the defendant the plaintiff states:

I.

That the defendant is, and at all times herein mentioned was, a corporation organized and existing under and by virtue of the laws of the United States relating to the organization of national banks, and engaged in such banking business as a national bank at the city of Seattle, in said Western District of Washington.

II.

That during the years of 1907, 1908 and 1909, one M. P. McCoy was an Examiner of Surveys and Special Disbursing Agent for the Interior Department of the United States; that during said times this plaintiff deposited, and caused to be deposited with the defendant, large sums of money to the credit of the said McCoy, to be by him used solely for the purpose of making payment of the expenses which he might be authorized to incur for the plaintiff as such

Examiner and Special Disbursing Agent.

III.

That said deposits were so made with said defendant as a Government depository, and in accordance with the statutes of the United States, and the regulations of its Treasury Department relating to deposits and disbursements of public moneys. [2]

IV.

That said McCoy did, at various times as hereinafter set forth, illegally, fraudulently, and without any authority from this plaintiff, draw checks on the defendant aggregating in amount the sum of Fifteen Thousand One Hundred and Twenty-nine and 81/100 (\$15,129.81) Dollars, payable to the order of fictitious payees, and thereafter at various places in the State of Washington and in the State of Montana, forge the endorsements of the names of such fictitious payees, and afterward procured from various banks in said states for his own use the sums of money for which said checks were so drawn.

V.

That the defendant, when said checks were presented to it from time to time, wrongfully and without authority from this plaintiff, charged the respective amounts thereof against the said deposits of this plaintiff.

VI.

That a list of said checks showing their respective dates, amounts and names of payees, is hereto attached, marked exhibit "A" and by this reference made a part of this complaint.

VII.

That said forgeries were not discovered by this plaintiff until on or about September 30, 1909, prior to which time of discovery, this plaintiff, relying upon the representations of the said defendant that said endorsements so made by said McCoy were genuine, had by mistake credited the said defendant with the said aggregate amount of said checks.

VIII.

That upon making such discovery, plaintiff notified the defendant thereof, and thereafter, to wit, on March 5, 1910, demanded of and from the defendant the payment of said sum of \$15,129.81, which had been so credited to the defendant by mistake on account of said forged endorsements. [3]

IX.

That defendant refused and still refuses to make payment of said amount, or any part thereof.

X.

That there is now due and owing the plaintiff from the defendant on said account, the sum of Fifteen Thousand One Hundred and Twenty-nine and 81/100 (\$15,129.81) Dollars, together with interest thereon since March 5, 1910, at the rate of 6% per annum, which the defendant neglects and refuses to pay.

WHEREFORE, plaintiff demands judgment against the defendant in the sum of Fifteen Thousand One Hundred and Twenty-nine and 81/100 (\$15,129.81) Dollars, together with interest thereon at the rate of 6% per annum from March 5, 1910,

until paid, and for its costs and disbursements herein.

ELMER E. TODD,
United States Attorney.

W. G. McLAREN,
Assistant United States Attorney.

The United States of America,
Western District of Washington,—ss.

W. G. McLaren, being first duly sworn, on oath deposes and says: That he is an assistant United States Attorney for said Western District of Washington, and is attorney for the plaintiff herein and makes this verification for and in its behalf; that he has read the foregoing complaint, knows the contents thereof and believes the same to be true.

W. G. McLAREN.

Subscribed and sworn to before me this 22d day of December, 1910.

[Seal] W. D. COVINGTON,
Deputy Clerk U. S. Circuit Court, Western District
of Washington. [4]

Exhibit "A" [to Complaint].

No.	Date.	Payee.	Amount.
1	Oct. 14, 1907	Albert Peterson	\$ 20.00
2	" 14, "	Nels Anderson	20.00
3	" 14, "	Wm. Jager	60.00
4	" 14, "	H. Berggren	47.50
5	" 31, "	F. L. Day	28.00
6	" 31, "	G. Hoge	28.00
7	" 31, "	Frank Engberg	96.00
8	" 31, "	Chas. Lund	78.75
9	" 31, "	J. D. King	62.00

6 *The National Bank of Commerce vs.*

No.	Date.	Payee.	Amount.
10	" 31, "	F. M. Clark	62.00
12	Nov. 30, "	F. L. Day	52.50
13	" 30, "	G. Hoge	52.50
14	" 30, "	Frank Engberg	180.00
15	" 30, "	Chas. Lund	150.00
16	" 30, "	J. D. King	60.00
17	" 30, "	F. M. Clark	60.00
19	Dec. 31, "	F. L. Day	54.25
20	" 31, "	G. Hoge	54.25
21	" 31, "	Frank Engberg	186.00
22	" 31, "	Chas. Lung	155.00
23	" 31, "	F. M. Clark	62.00
24	" 31, "	J. D. King	62.00
26	Jan. 10, 1908	F. L. Day	17.50
27	" 10, "	G. Hoge	17.50
28	" 10, "	Frank Engberg	60.00
29	" 10, "	Chas. Lung	50.00
30	" 13, "	J. D. King	26.00
31	" 13, "	F. M. Clark	26.00
43	May 6, "	John Jabelson	27.50
44	" 6, "	John S. Cole	36.00
45	" 31, "	J. D. King	62.00
46	" 31, "	F. M. Clark	62.00
47	" 31, "	A. J. Whitney	54.25
[5]			
48	May 31, 1908	H. M. Benson	\$125.00
49	" 31, "	C. A. Thrapp	150.00
50	June 10, "	H. M. Benson	48.75
51	" 10, "	C. A. Thrapp	72.00
52	" 23, "	J. E. Scherer	78.00
53	" 23, "	H. M. Benson	63.75

United States of America.

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No.	Date.	Payee.	Amount.
54	" 30, "	J. D. King	69.33
55	" 30, "	F. M. Clark	60.00
56	" 30, "	A. J. Whitney	54.25
57	" 30, "	H. A. Moore	63.00
58	" 30, "	D. H. Sullivan	12.25
59	" 30, "	Geo. D. Cook	14.00
60	" 30, "	F. W. McCulley	14.00
61	" 30, "	S. F. Cady	12.25
62	" 30, "	H. M. Benson	54.00
2	July 31, "	J. D. King	100.00
3	" 31, "	F. M. Clark	62.00
4	" 31, "	Geo. D. Cook	62.00
5	" 31, "	F. M. McCulley	62.00
6	" 31, "	A. J. Whitney	62.00
7	" 31, "	H. A. Moore	279.00
8	" 31, "	D. H. Sullivan	54.25
9	" 31, "	S. F. Cady	54.25
10	" 31, "	H. M. Benson	248.00
12	Aug. 31, "	J. D. King	100.00
13	" 31, "	F. M. Clark	62.00
14	" 31, "	Geo. D. Cook	62.00
15	" 31, "	F. W. McCulley	62.00
16	" 31, "	A. J. Whitney	62.00
17	" 31, "	H. A. Moore	279.00
18	" 31, "	D. H. Sullivan	54.25
19	" 31, "	S. F. Cady	54.25
20	" 31, "	H. M. Benson	248.00
22—A	Sept. 8, "	A. Fetters	7.85
22—B	" 30, "	J. D. King	100.00
[6]			
23	Sept. 30, 1908	F. M. Clark	\$ 60.00

8 *The National Bank of Commerce vs.*

No.	Date.	Payee.	Amount.
23	" 30, "	F. M. Clark	60.00
24	" 30, "	Geo. D. Cook	60.00
25	" 30, "	F. W. McCulley	60.00
26	" 30, "	A. J. Whitney	60.00
27	" 30, "	H. A. Moore	270.00
28	" 30, "	D. H. Sullivan	52.50
29	" 30, "	S. F. Cady	52.50
30	" 30, "	H. M. Benson	240.00
1	Oct. 31, "	J. D. King	100.00
2	" 31, "	F. M. Clark	62.00
3	" 31, "	H. A. Moore	279.00
4	" 31, "	Geo. D. Cook	62.00
5	" 31, "	F. W. McCulley	62.00
6	" 31, "	A. J. Whitney	62.00
7	" 31, "	H. M. Benson	248.00
8	" 31, "	(Blank)	54.25
9	" 31, "	S. F. Cady	54.25
11	Nov. 30, "	J. D. King	100.00
12	" 30, "	F. M. Clark	60.00
13	" 30, "	Geo. D. Cook	60.00
14	" 30, "	F. W. McCulley	60.00
15	" 30, "	A. J. Whitney	60.00
16	" 30, "	H. A. Moore	270.00
17	" 30, "	D. H. Sullivan	52.50
18	" 30, "	S. F. Cady	52.50
19	" 30, "	H. M. Benson	240.00
21	Dec. 31, "	J. D. King	100.00
22	" 31, "	F. M. Clark	62.00
23	" 31, "	Geo. D. Cook	62.00
24	" 31, "	F. W. McCulley	62.00
25	" 31, "	A. J. Whitney	62.00

United States of America.

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No.	Date.	Payee.	Amount.
26	" 31, "	D. H. Sullivan	54.25
27	" 31, "	S. F. Cady	54.25
28	" 31, "	T. E. Lynch	24.50
29	" 31, "	Claude J. Perret	24.50
[7]			
30	Dec. 31, 1908	H. M. Benson	\$276.00
31	" 31, "	H. A. Moore	279.00
1	Jan. 5, 1909	J. D. King	12.90
2	" 5, "	F. M. Clark	8.00
3	" 8, "	Geo. D. Cook	16.00
4	" 8, "	F. W. McCulley	16.00
5	" 8, "	A. J. Whitney	16.00
6	" 8, "	D. H. Sullivan	14.00
7	" 8, "	S. F. Cady	14.00
8	" 8, "	H. M. Benson	48.00
9	" 8, "	H. A. Moore	72.00
14	Mar. 31, 1909	J. D. King	35.48
15	" 31, "	F. M. Clark	22.00
16	" 31, "	Geo. D. Cook	18.00
17	" 31, "	F. W. McCulley	18.00
18	" 31, "	A. J. Whitney	18.00
19	" 31, "	Joe Mikel	14.00
20	" 31, "	E. M. Bassett	14.00
21	" 31, "	Geo. K. Cooper	14.00
22	" 31, "	Chas. Paine	14.00
23	" 31, "	H. M. Benson	82.50
24	" 31, "	A. C. Junkin	72.00
1	Apr. 30, "	J. D. King	100.00
2	" 30, "	F. M. Clark	60.00
3	" 30, "	Geo. D. Cook	60.00
4	" 30, "	F. W. McCulley	60.00

10 *The National Bank of Commerce vs.*

No.	Date.	Payee.	Amount.
5	" 30, "	A. J. Whitney	60.00
6	" 30, "	Joe Mikel	52.50
7	" 30, "	E. M. Bassett	52.50
8	" 30, "	Geo. K. Cooper	52.50
9	" 30, "	Chas. Paine	52.50
10	" 30, "	A. C. Junkin	270.00
11	" 30, "	H. M. Benson	300.00
13	May 31, "	J. D. King	100.00
14	" 31, "	F. M. Clark	62.00

[8]

15	May 31, 1909	Geo. D. Cook	\$ 62.00
16	" 31, "	F. W. McCulley	62.00
17	" 31, "	A. J. Whitney	62.00
18	" 31, "	Joe Mikel	54.25
19	" 31, "	E. M. Bassett	54.25
20	" 31, "	Geo. K. Cooper	54.25
21	" 31, "	Chas. Paine	54.25
22	" 31, "	A. C. Junkin	279.00
23	" 31, "	H. M. Benson	310.00
25	June 30, "	J. D. King	100.00
26	" 30, "	F. M. Clark	60.00
27	" 30, "	Geo. D. Cook	60.00
28	" 30, "	F. W. McCulley	60.00
29	" 30, "	A. J. Whitney	60.00
30	" 30, "	Joe Mikel	52.50
31	" 30, "	E. M. Bassett	52.50
32	" 30, "	Geo. K. Cooper	52.50
33	" 30, "	Chas. Paine	52.50
34	" 30, "	H. M. Benson	300.00
35	" 30, "	A. C. Junkin	270.00
1	July 31, "	J. D. King	100.00

United States of America.

11

No.	Date.	Payee.	Amount.
2	" 31, "	F. M. Clark	62.00
3	" 31, "	Geo. D. Cook	62.00
4	" 31, "	F. W. McCulley	62.00
5	" 31, "	A. J. Whitney	62.00
6	" 31, "	Joe Mikel	54.25
7	" 31, "	E. M. Bassett	54.25
8	" 31, "	Geo. K. Cooper	54.25
9	" 31, "	Chas. Paine	54.25
10	" 31, "	A. C. Junkin	279.00
11	" 31, "	H. M. Benson	310.00
13	Aug. 31, "	J. D. King	100.00
14	" 31, "	F. M. Clark	62.00
15	" 31, "	Geo. D. Cook	62.00
16	" 31, "	F. W. McCulley	62.00

[9]

17	Aug. 31, 1909	A. J. Whitney	\$ 62.00
18	" 31, "	Joe Mikel	54.25
19	" 31, "	E. M. Bassett	54.25
20	" 31, "	Geo. K. Cooper	54.25
21	" 31, "	Chas. Paine	54.25
22	" 31, "	A. C. Junkin	279.00
23	" 31, "	H. M. Benson	310

[Indorsed]: Complaint. Filed U. S. Circuit Court, Western District of Washington. Dec. 22, 1910. Sam'l D. Bridges, Clerk. W. D. Covington, Deputy. [10]

*United States Circuit Court, Western District of
Washington, Northern Division.*

No. 1933.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NATIONAL BANK OF COMMERCE, a Corpora-
tion,

Defendant.

Answer.

Comes now the defendant in the above-entitled action and answering the complaint of the plaintiff, for cause of answer says:

I.

Defendant admits the allegations contained in paragraph one of the complaint.

II.

Answering the second paragraph of the complaint, this defendant admits that during the years 1907, 1908 and 1909 [11] one P. M. McCoy was an Examiner of Surveys and Special Disbursing Agent for the Interior Department of the United States; that during said period plaintiff deposited with the defendant large sums of money to the credit of said P. M. McCoy, and denies each and every other allegation in said paragraph contained and each and every part thereof.

III.

Answering the third paragraph of the complaint this defendant admits that said deposits were made

with this defendant, but denies each and every other allegation in said paragraph contained, and each and every part thereof.

IV.

Answering the fourth paragraph of the complaint this defendant says that it has neither knowledge nor information sufficient to enable it to form a belief as to the truth or falsity of the matters and things therein alleged, and therefore denies the same and each and every part thereof.

V.

Answering the fifth paragraph of the complaint this defendant admits that it paid certain checks drawn by the said McCoy against said deposits of the plaintiff and charged the respective amounts thereof against the deposits of the plaintiff, but denies each and every other allegation in said paragraph contained, and each and every part thereof.

VI.

Answering the sixth paragraph of the complaint this defendant says that it has neither knowledge nor information sufficient to enable it to form a belief as to the truth or falsity of the matters and things therein alleged, and therefore denies the same and each and every part thereof.

VII.

Answering the seventh paragraph of the complaint this defendant says that it has neither knowledge nor information [12] sufficient to enable it to form a belief as to the truth or falsity of the matters and things therein alleged, and therefore denies the same and each and every part thereof.

VIII.

Answering the eighth paragraph of the complaint this defendant admits that on the 5th of March, 1910, the plaintiff demanded of and from the defendant payment of Fifteen Thousand One Hundred Twenty-nine and 81/100 Dollars (\$15,129.81), and denies each and every other allegation in said paragraph contained and each and every part thereof.

IX.

Answering the ninth paragraph of the complaint this defendant admits that it refused and still refuses to make the payment of said amount or any part thereof.

X.

Answering the tenth paragraph of the complaint this defendant denies the same and each and every part thereof, and denies that there is now due and owing to the plaintiff from the defendant on said account the sum of \$15,129.81, or any other sum or sums whatsoever.

For a further and first affirmative defense to said complaint this defendant alleges:

I.

That during the years 1907, 1908 and 1909 the plaintiff deposited with the defendant various and considerable sums of money to the credit of one M. P. McCoy, as Examiner of Surveys and Special Disbursing Agent for the Interior Department of the United States, with instructions to pay checks drawn against said deposits by the said M. P. McCoy as such Examiner and Special Disbursing Agent; that at the end of each month the account so created in

favor of the said McCoy was regularly balanced by the defendant and the vouchers returned to the plaintiff and a statement of account was rendered both to the said McCoy and to said plaintiff [13] monthly during the entire time that the plaintiff carried said account in favor of the said McCoy with this defendant. That the plaintiff did not, within sixty days after the return to the plaintiff of the checks drawn by the said McCoy against said account, notify the defendant that the checks so paid were forgeries. That by reason of such failure to so notify the defendant of said forgeries within sixty days after the return of the paid checks, the plaintiff is barred and estopped from maintaining this action.

For a further and second affirmative defense to plaintiff's complaint this defendant alleges:

I.

That the deposits so made by the plaintiff with this defendant in favor of the said M. P. McCoy, as such Examiner and Special Disbursing Agent, were made in the usual and customary manner, as deposits are generally, ordinarily and customarily made by any individual depositor and that the relation of debtor and creditor was created between the plaintiff and the defendant by reason of such deposits, and that it became the duty of the defendant to pay checks drawn by the said McCoy against such deposits, and that all checks drawn by the said McCoy against said deposits were paid from time to time as the same were presented for payment, and that it was not the duty of the defendant to inquire as to the name of the payee of such checks, and that all

checks paid by the defendant as referred to in the complaint were duly and regularly signed with the genuine signature of the said M. P. McCoy, as such Examiner and Special Disbursing Agent, and that monthly statements were rendered to the plaintiff and to the said McCoy, showing the amount of each check drawn by the said McCoy against said deposits and the aggregate of such checks, and that such monthly statements were duly and regularly rendered in conformity with the usual custom of bankers, and that no complaint of any kind was made to the defendant by the plaintiff as to the improper payment of any [14] checks by reason of forgeries or otherwise, until the 5th day of March, 1910. That it was the duty of the plaintiff upon the return of the vouchers of the said McCoy and upon the rendition of statements of his account, to have examined the said account and to have promptly notified the defendant of the alleged forgeries, if any there were, and that by reason of plaintiff's failure to so notify the defendant of such forgeries within a reasonable time after the said checks were paid, the said plaintiff is barred and estopped of any right it may have had to maintain this action for the recovery of the money prayed for in the complaint.

WHEREFORE, defendant prays that it may be dismissed hence with its costs and disbursements in this action expended.

KERR & McCORD,
Attorneys for Defendant.

State of Washington,
County of King,—ss.

Ralph S. Stacey, being first duly sworn, upon oath deposes and says: That he is Second Vice-president of the National Bank of Commerce of Seattle, the defendant in the above-entitled action; that he has read the within and foregoing answer, knows the contents thereof, and that the same is true, as he verily believes.

RALPH S. STACEY.

Subscribed and sworn to before me this, the 11th day of February, A. D. 1911.

[Seal]

J. N. IVEY,

Notary Public in and for the State of Washington,
Residing at Seattle.

Copy of within answer received and due service of same acknowledged this 11th day of February, 1911.

ELMER E. TODD,

W. G. McLAREN,

Attorneys for Plaintiff.

[Indorsed]: Answer. Filed U. S. Circuit Court,
Western District of Washington. Feb. 11, 1911.
Sam'l D. Bridges, Clerk. W. D. Covington, Deputy.
[15]

*United States Circuit Court, Western District of
Washington, Northern Division.*

No. 1933.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NATIONAL BANK OF COMMERCE, a Corpora-
tion,

Defendant.

Demurrer.

I.

Comes now the above-named plaintiff and demurs to the first affirmative defense of the defendant herein, for the reason and upon the grounds that said affirmative defense does not state facts sufficient to constitute a defense to said action.

II.

And plaintiff demurs to defendant's second affirmative defense, for the reason and upon the grounds that said defense does not state facts sufficient to constitute any defense to said action.

ELMER E. TODD,

United States Attorney.

W. G. McLAREN,

Assistant United States Attorney.

Received a copy of the within demurrer this 23d day of Feb., 1911.

KERR & McCORD,

Attorneys for Defendant.

[Indorsed]: Demurrer. Filed U. S. Circuit Court, Western District of Washington. Feb. 23, 1911. Sam'l D. Bridges, Clerk. W. D. Covington, Deputy. [16]

*United States Circuit Court, Western District of
Washington, Northern Division.*

1933.

Filed Sept. 21, 1911.

UNITED STATES OF AMERICA

vs.

NATIONAL BANK OF COMMERCE.

Oral Decision on Demurrer to Affirmative Defenses.

The United States prosecutes this action to recover a sum of money, being the aggregate amount of numerous checks issued by a disbursing agent against a deposit account subject to his checks in the defendant bank, which is an authorized depository of Government money. A series of frauds was practiced by issuing checks payable to the order of fictitious payees, these were endorsed by the disbursing agent using the fictitious names, other banks then received and cashed them and passed them on to the defendant, and by that method the disbursing agent obtained and misappropriated the money.

The defendant pleads as a defense that during the period of time in which the checks were issued and paid, it regularly rendered monthly statements of account to the Government and with each statement

returned the checks which had been paid during the preceding month, and that by failing to report the bad checks with business promptness, the action is barred by laches. The answer contains two separate affirmative defenses but they are alike, except that, the first one alleges that the Government failed to report the bad checks within a period of sixty days. The demurrer is aimed at both of these defenses.

If these checks came to the defendant bank through other banks the defendant became obligated, by business rules and bank rules, to promptly report any ground for rejecting the checks, or for reclaiming the amounts paid thereon. I doubt very much whether it would have recourse at this time against the banks from whom the checks were received, even if the [17] Government should prevail in the action. The right to reclaim is probably barred by the lapse of time. There may be good ground for holding that the statutes that have been cited are not applicable or controlling, but without any statute the rule of honest, fair dealing between contracting parties applicable to this case, is that bankers must bear losses resulting from paying bad checks. When a check is presented for payment, the banker has a right to know, to be assured, before paying, that the person demanding payment is the identical person entitled to receive the money. If a check is written payable to a person, or supposed person, or to his order, the bank is not obligated to pay that check until the holder identifies himself as the payee, or endorsee and offers satisfactory proof of the

genuineness of every endorsement thereon. That is a natural right incidental to a banker's liability for making a payment to a person having no right to demand it. Now, tracing that same rule a little further, where the bank has been deceived and has paid a check which ought not to have been paid, early information of the error is necessary to preserve the right of recourse against whomsoever may be primarily responsible for the error and the depositor is the one best qualified to discover errors, so that there is a presumption that he will, upon inspection of checks that have been paid, discover a bad check if there is one, and he is obligated to be vigilant and prompt to report errors. Therefore, where there is a running account between a depositor and a bank, and monthly statements are made to the depositor, with a surrender of his checks that the bank has paid, according to the rule of honesty and fair dealing, the depositor becomes bound to look at the returns and report any error promptly. The rule between individuals having mutual running accounts is that, an account stated becomes an account proved, if the party to whom the statement is rendered fails to show errors or mistakes in it within a reasonable time. There is a good reason for this, which this case demonstrates, for if the plaintiff had acted with promptness in checking up the returns made by the defendant [18] as pleaded in its answer, the fraudulent practice would have been discovered and stopped and all parties could have been protected. The failure of the Government to examine these returns and report errors in time, was a cause of the

successful practice, or continuance of those frauds, and was necessarily detrimental to the defendant. That failure on the part of the Government counterbalances any neglect to discharge its obligation on the part of the defendant bank. There has been a loss suffered by reason of mutual neglect by plaintiff and defendant. Now, who should bear that loss? I think that the common-law rule, that where there is negligence and contributory negligence the law will not concern itself with any controversy as to who should bear the loss, but leaves the loss to rest where it falls. In this case that rule leaves the loss resting upon the plaintiff. The Court sustains the demurrer to the first affirmative defense and overrules it as to the second.

C. H. HANFORD,
United States District Judge.

[Indorsed]: Oral Decision on Demurrer to Affirmative Defenses. Filed U. S. Circuit Court, Western District of Washington. Sept. 21, 1911. Sam'l D. Bridges, Clerk. B. O. Wright, Deputy.
[19]

*In the Circuit Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 1933.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NATIONAL BANK OF COMMERCE, a Corpora-
tion,

Defendant.

**Order [Sustaining Demurrer to First Affirmative
Defense, etc.].**

The above-entitled cause having come on for hearing in open court on the 18th day of September, 1911, on the demurrer of the plaintiff to each of the two separate affirmative defenses of the defendant herein, plaintiff appearing by Elmer E. Todd, United States Attorney, and W. G. McLaren, Assistant United States Attorney, and defendant appearing by Kerr and McCord, its attorneys, and the Court having heard the argument of counsel thereon, and being in all things fully advised;

It is hereby ordered that the demurrer of the plaintiff to the first affirmative defense of the defendant, be, and the same is hereby sustained;

To which action of the Court the defendant then and there excepted, which exception is hereby allowed.

It is further ordered that the demurrer of the plaintiff to the second affirmative defense of the de-

fendant be, and the same is hereby overruled;

To which action of the Court the plaintiff then and there excepted, which exception is hereby allowed.

Done in open court this 21st day of September, 1911.

C. H. HANFORD,
Judge.

[Indorsed]: Order. Filed U. S. Circuit Court Western District of Washington. Sept. 21, 1911. Sam'l D. Bridges, Clerk. B. O. Wright, Deputy.
[20]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 1933.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

NATIONAL BANK OF COMMERCE OF
SEATTLE, a Corporation,
Defendant.

Amended Answer.

Comes now the defendant in the above-entitled action and filing its amended answer to the complaint of the plaintiff, for cause of answer, says:

I.

Defendant admits the allegations contained in paragraph one of the complaint.

II.

Answering the second paragraph of the complaint,

this defendant admits that during the years 1907, 1908 and 1909, one P. M. McCoy, was an Examiner of Surveys and Special Disbursing Agent for the Interior Department of the United States; that during said period plaintiff deposited with the defendant large sums of money to the credit of said P. M. McCoy, and denies each and every other allegation in said paragraph contained and each and every part thereof.

III.

Answering the third paragraph of the complaint, this defendant admits that said deposits were made with this defendant, but denies each and every other allegation in said paragraph contained and each and every part thereof.

IV.

Answering the fourth paragraph of the complaint, this defendant says that it has neither knowledge nor information [21] sufficient to enable it to form a belief as to the truth or falsity of the matters and things therein alleged, and therefore denies the same and each and every part thereof.

V.

Answering the fifth paragraph of the complaint, this defendant admits that it paid certain checks drawn by the said McCoy against said deposits of the plaintiff and charged the respective amounts thereof against the deposits of the plaintiff, but denies each and every other allegation in said paragraph contained, and each and every part thereof.

VI.

Answering the sixth paragraph of the complaint,

this defendant says that it has neither knowledge nor information sufficient to enable it to form a belief as to the truth or falsity of the matters and things therein alleged, and therefore denies the same and each and every part thereof.

VII.

Answering the seventh paragraph of the complaint, this defendant says that it has neither knowledge nor information sufficient to enable it to form a belief as to the truth or falsity of the matters and things therein alleged, and therefore denies the same and each and every part thereof.

VIII.

Answering the eighth paragraph of the complaint, this defendant admits that on the 5th of March, 1910, the plaintiff demanded of and from the defendant payment of Fifteen Thousand One Hundred Twenty-nine and 81/100 Dollars (\$15,129.81), and denies each and every other allegation in said paragraph contained and each and every part thereof.

IX.

Answering the ninth paragraph of the complaint, this defendant admits that it refused and still refuses to make the payment of said amount or any part thereof. [22]

X.

Answering the tenth paragraph of the complaint, this defendant denies the same and each and every part thereof, and denies that there is now due and owing to the plaintiff from the defendant the sum of \$15,129.81, or any other sum or sums whatsoever.

And for a further and first affirmative defense to

the complaint, this defendant alleges:

1. That the deposits so made by the plaintiff with the defendant in favor of P. M. McCoy, as such Examiner of Surveys and Special Disbursing Agent, were made in the usual and customary manner, as deposits are usually, ordinarily and customarily made by any individual depositor and that the relation of debtor and creditor was created between the plaintiff and the defendant by reason of such deposits, and that it became the duty of the defendant to pay the checks drawn by the said McCoy against said deposits, and that all checks drawn by the said McCoy against said deposits were paid from time to time as the same were presented for payment, and that it was not the duty of the defendant to inquire as to the name of the payee of such checks and that all checks paid by the defendant as referred to in the complaint were duly and regularly signed with the genuine signature of the said McCoy, as Special Examiner and Disbursing Agent, and that monthly statements were rendered to the plaintiff and to the said McCoy showing the amount of each check drawn by the said McCoy against said deposits and the aggregate of such checks, and that such monthly statements were duly and regularly rendered in conformity with the usual custom of bankers, and that no complaint of any kind was made to the defendant by the plaintiff as to the improper payment of any checks by reason of forgeries, fictitious payees, or otherwise, until the 5th day of March, 1910. That it was the duty of plaintiff upon the return of the vouchers of said McCoy and upon the rendition of

statements of his account, to have examined said account and to [23] have promptly notified the defendant of the alleged forgeries or fraud, if any there were. That the failure on the part of the plaintiff to promptly notify the defendant of the alleged forgeries or fraud, if any there were, resulted in damage and injury to the defendant in a sum in excess of the amount sued for by the plaintiff in this action, and that the defendant was damaged by such negligence on the part of the plaintiff in failing to notify the defendant of the alleged forgeries promptly, in that the defendant would have been able—if the forgeries had promptly been made known to the defendant—to have prevented any of the forgeries except the first one, or the ones that occurred during the first month of the period during which said forgeries are alleged to have been committed; and that by reason of the failure of the plaintiff to so promptly notify the defendant of the fraud of the said McCoy, the defendant is precluded from asserting any claim that it may have had against the various banks which forwarded the checks in question to the defendant for payment, and that by reason of plaintiff's failure to so notify the defendant of such fraud on the part of said McCoy within a reasonable time after said checks were paid and a statement of the account of the said McCoy, together with the vouchers, was sent by the defendant to the plaintiff, the said plaintiff is barred and estopped of any right it may have had, if any, to maintain this action for the recovery of the money prayed for in the complaint.

For a further and second affirmative defense to the

complaint, this defendant alleges:

1. That the money sued for in this action, whether paid to fictitious payees or otherwise, was expended and used by the said McCoy in payment of claims against the United States created by said McCoy under authority of the United States and in pursuance of the laws of the United States, and in payment of claims that the said McCoy, as Special Examiner of Surveys, was authorized to make and pay on behalf of the United States. [24]

WHEREFORE defendant prays that it may be dismissed hence with its costs and disbursements in this action expended.

KERR & McCORD,
Attorneys for Defendant.

[Indorsed]: Amended Answer. Filed in the U. S. District Court, Western District of Washington. Mar. 12, 1912. A. W. Engle, Clerk. By S., Deputy. [25]

*United States District Court, Western District of
Washington, Northern Division.*

No. 1933-C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NATIONAL BANK OF COMMERCE, a Corpora-
tion,

Defendant.

Reply to Amended Answer.

Comes now the plaintiff and for its reply to the

first affirmative defense in defendant's amended answer herein, denies each and every allegation therein contained.

II.

Replying to the second affirmative defense, plaintiff denies that the money sued for in this action, or any part thereof, was expended and used in payment of claims against the United States or at all.

ELMER E. TODD,

United States Attorney.

W. G. McLAREN,

Assistant United States Attorney.

Received a copy of the within Reply this 12th day of March, 1912.

KERR & McCORD,

Attorneys for Defendant.

[Indorsed]: Reply to amended Answer. Filed U. S. District Court, Western District of Washington. Mar. 13, 1912. A. W. Engle, Clerk. By S., Deputy. [26]

*United States District Court, Western District of
Washington, Northern Division.*

No. 1933-C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NATIONAL BANK OF COMMERCE, a Corpora-
tion,

Defendant.

Judgment.

This cause came on for trial on the 19th day of May, 1914, before the above-entitled court and a jury duly empaneled and sworn to try said cause, and evidence having been introduced both on behalf of the plaintiff and on behalf of the defendant, upon the motion of the plaintiff on the second day of the trial, to wit, May 20, 1914, the Court instructed the jury to return a verdict in favor of the plaintiff in the sum of Fifteen Thousand One Hundred Twenty-nine and 81/100 Dollars (\$15,129.81), together with interest thereon from the 5th day of March, 1910, at the rate of six per cent per annum, and said verdict was accordingly returned by the jury; wherefore, by virtue of the aforesaid premises;

IT IS ORDERED, ADJUDGED AND DECREED, That the plaintiff have and recover from the defendant the sum of Fifteen Thousand One Hundred Twenty-nine and 81/100 Dollars (15,-129.81), together with interest thereon from the 5th day of March, 1910, at the rate of six per cent per annum, or Three Thousand Eight Hundred Thirty-two and 88/100 Dollars (\$3,832.88) making a total of Eighteen Thousand Nine Hundred and Sixty-two and 69/100 Dollars (\$18,962.69), together with its costs and disbursements herein.

To the above judgment and each and every part thereof the defendant prays an exception, which is allowed. [27]

Dated this 25th day of May, 1914.

JEREMIAH NETERER,
Judge.

[Indorsed]: Judgment. Filed in the U. S. District Court, Western District of Washington. May 25th, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [28]

*United States District Court, Western District of
Washington, Northern Division.*

No. 1933.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NATIONAL BANK OF COMMERCE, a Corpora-
tion,

Defendant.

**Stipulation [Extending Time to June 25, 1914, to
Prepare, etc., Bill of Exceptions].**

It is hereby stipulated by and between the parties hereto, by their respective attorneys of record herein, that the defendant may have thirty days from the 26th day of May, A. D. 1914, in which to prepare and settle its Bill of Exceptions herein.

Seattle, Washington, May 26, 1914.

CLAY ALLEN,

Attorney for Plaintiff.

KERR & McCORD,

Attorneys for Defendant.

[Indorsed]: Stipulation for Extension of Time. Filed in the U. S. District Court, Western District of Washington. May 27, 1914. Frank L. Crosby, Clerk. By Ed. M. Lakin, Deputy. [29]

*United States District Court, Western District of
Washington, Northern Division.*

No. 1933-C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NATIONAL BANK OF COMMERCE, a Corpora-
tion,

Defendant.

**Order Extending Time to June 26, 1914, for Filing
Bill of Exceptions.**

Upon motion of Messrs. Kerr & McCord, attorneys for the defendant and pursuant to the written stipulation of the parties hereto now on file herein, providing for an extension of time to the defendant for signing, allowing and filing its Bill of Exceptions herein, the Court having considered the same, and cause being shown therefor, it is hereby

ORDERED: That the time for the preparation, signing, allowance and filing of the Bill of Exceptions of the above-named defendant in the above-entitled case is hereby extended for a period of thirty (30) days from and after May 26th, 1914.

Dated this 20th day of May, 1914.

JEREMIAH NETERER,

Judge.

O. K.—ALLEN,

U. S. Attorney.

[Indorsed]: Order. Filed in the U. S. District Court, Western Dist. of Washington. May 27th,

1914. Frank L. Crosby, Clerk. By E. M. Lakin,
Deputy. [30]

*In the United States District Court for the Western
District of Washington, Northern Division.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NATIONAL BANK OF COMMERCE,

Defendant.

**Stipulation [Extending Time to July 18, 1914, to
Prepare, etc., Bill of Exceptions].**

It is hereby stipulated by and between the parties
hereto that the time for preparing, serving and filing
the Bill of Exceptions in the above-entitled cause
shall be extended until July 18, 1914.

Dated June 22d, 1914.

G. P. FISHBURNE,

Attorney for Plaintiff.

KERR & McCORD,

Attorneys for Defendant.

[Indorsed]: Stipulation. Filed in the United
States District Court, Western District of Washing-
ton. June 22, 1914. Frank L. Crosby, Clerk. [31]

*In the District Court of the United States for the
Western District of Washington, Northern Divi-
sion.*

No. 1933-C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NATIONAL BANK OF COMMERCE,

Defendant.

**Order [Extending Time to July 18, 1914, to Prepare,
etc., Bill of Exceptions].**

This cause coming on to be heard upon motion of defendant for an extension of time within which to prepare, file and serve its Bill of Exceptions and upon stipulation of parties hereto;

It is by the Court ordered that the defendant shall have until July 18, A. D. 1914, within which to prepare, file and serve its Bill of Exceptions in the above-entitled cause.

Done in open court this 22d day of June, 1914.

JEREMIAH NETERER,

Judge.

[Indorsed]: Order. Filed in the United States District Court, Western District of Washington. June 22, 1914. Frank L. Crosby, Clerk. By
———, Deputy. [32]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 1933—C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE NATIONAL BANK OF COMMERCE,

Defendant.

Bill of Exceptions.

BE IT REMEMBERED, That heretofore, on, to wit, the 19th day of May, 1914, the above-entitled cause came on regularly for trial in the above-entitled court, before the Honorable Jeremiah Neterer, District Judge, sitting with a jury, the plaintiff appearing by G. P. Fishburne, Esq., Assistant United States District Attorney, the defendant appearing by E. S. McCord, Esq., of Kerr & McCord, its attorneys and counsel, a jury having been duly impaneled and sworn to try the cause, and counsel for plaintiff having made his opening statement to the jury, counsel for defendant reserving his opening statement; thereupon the following proceedings were had and done, to wit:

[Testimony of M. P. McCoy, for Plaintiff.]

M. P. McCOY, a witness on behalf of the plaintiff, being first duly sworn, on oath deposes and says as follows: [33]

Direct Examination.

(By Mr. FISHBURNE.)

Q. Your name is M. P. McCoy, is it?

(Testimony of M. P. McCoy.)

A. Yes, sir.

Q. You were formerly in the Government service?

A. Yes, sir, as examiner of surveys for the General Land Office.

Q. What was your official title?

A. Examiner of Surveys and Special Disbursing Agent.

Mr. FISHBURNE.—“Disbursing Agent” that should be, Mr. McCord.

Q. Where were your headquarters?

A. Seattle.

Q. During what period of time did you occupy such position?

A. From 1900 until about two years ago.

Q. About November, 1909. A. Yes, sir.

Q. You held that position continuously during that time? A. Yes, sir.

Q. What other important position, if any, did you hold prior to that period?

A. I was a member of the Geological Survey for the Interior Department.

Q. For about how long?

A. For about ten years before that.

Q. What were your duties as Examiner of Surveys and Special Disbursing Agent,—what was the nature of your work?

A. The public lands are surveyed by contract, by deputy surveyors, and my business was to inspect their surveys in the field after their finishing their work,—checking it up, in other words, to see if it was correct. [34]

(Testimony of M. P. McCoy.)

Q. About how wide a territory did your duties cover?

A. Well, I was in the States of Washington, Oregon, Idaho and Montana.

Q. And you say your headquarters were at Seattle? A. Yes, sir.

Q. What was it necessary for you to do, Mr. McCoy, in order to go around examining these public,—these surveys of public lands,—what did you have to do?

A. To inspect the surveys in the field, which necessitated transportation and assistance and subsistence for the assistants.

Q. You were authorized by the Government to employ men for that purpose? [35]

A. And to incur all these expenses.

Q. Were some of these surveys made in the State of Washington? A. Yes, sir.

Q. Where, for instance?

A. Well, throughout the State.

Q. You got your instructions from Washington, D. C.? A. Yes, sir.

Q. Were these instructions given to you for each particular survey, or were they in the nature of general instructions which you were to follow out?

A. There were general instructions and sometimes special instructions.

Q. Under the general instructions, did you have your own option as to the order in which you took up the examination of the different surveys?

A. Yes, sir.

(Testimony of M. P. McCoy.)

Q. What arrangement was made relative to the payment of the bills that you might incur under your authority for the performance of your duties?

(By Mr. McCORD.)

Q. Were these instructions in writing?

A. Yes, sir.

(By Mr. FISHBURNE.)

Q. What became of these instructions, Mr. McCoy?

A. I burned them something like two years ago, when this trouble began, I burned all my field-notes and note-books and all things of that kind. I had a trunk full and I burned them.

Q. Can you give us, briefly, the arrangements you had with the Government, whereby this money was to be paid for labor, or for services, or material, which you might incur?

Mr. McCORD.—I object as that is not the best evidence and no proper foundation has been laid for the introduction of secondary evidence.

Mr. McCORD.—I object to that.

The COURT.—I overrule the objection. [36]

Q. I will ask you this question, Mr. McCoy—from where did you get your instructions regarding the payment of this money?

A. From the Commissioner of the General Land Office.

Q. Were they oral, or in writing? A. Written.

Q. These written instructions, you still have them?

A. No, sir.

Q. What became of them? A. I burned them.

(Testimony of M. P. McCoy.)

Q. I will ask you what your instructions were, as to how you were to pay these men?

Mr. McCORD.—I object, as it is not the best evidence; asking for the contents of a written instrument; there is not shown any reason why the originals cannot be produced. The best evidence would be the files in the Land Office at Washington, or a copy of them.

Mr. McCORD.—I make that objection, your Honor.

Mr. FISHBURNE.—The testimony shows the originals were burned, your Honor. I think any secondary evidence is competent.

(Discussion.)

The COURT.—The next best evidence to the originals would be an examined or approved copy. I will sustain this objection.

Mr. FISHBURNE.—Allow us an exception.

The COURT.—Exception allowed.

Q. How were you to pay them?

A. I was to pay them as disbursing agent.

Q. I mean by check or by cash?

A. Well laterly I paid everything—I guess during this period in dispute, I guess, I paid everything by check.

Q. On what banks were your checks drawn?

A. The National Bank of Commerce of Seattle.

Q. You had an account there?

Mr. McCORD.—I move to strike out the testimony as not [37] responsive to the question, he asked

(Testimony of M. P. McCoy.)

how he was instructed to do and he answered how he did it.

Mr. McCORD.—I waive that, he answered yes.

A. Yes, sir, I had an account with the National Bank of Commerce as Special Disbursing Agent.

Q. You drew on that account, in accordance with your instructions, for the payment of bills and expenses?

Mr. McCORD.—I object to that question, your Honor, for the same reason. That is a conclusion as to whether he drew it in accordance with his instructions. The instructions would be the best evidence.

The COURT.—I overrule the objection. He may testify as to what he did.

Mr. McCORD.—I ask an exception.

The COURT.—Exception allowed.

Q. You drew on that account, in accordance with your instructions, for the payment of bills and expenses? A. Yes, sir.

Q. Now, Mr. McCoy, I will ask you to examine this bundle of checks, which I hand you, and state whether, or not, they were issued by you while you were in the employ of the Government.

A. Yes, sir.

Q. On each check that is your signature, M. P. McCoy, Examiner of Surveys and S. P. A.?

A. Yes, sir.

Q. Sp. A.? Special Disbursing Agent?

A. Yes, sir.

Q. Mr. McCoy, what is the meaning of the marginal notation, Voucher Number 6, or Voucher num-

(Testimony of M. P. McCoy.)

ber so and so, on the check, what does that refer to?

A. In making my quarterly statement, or rendering my quarterly account to the General Land Office, I submitted a voucher for each check, up until along about in September, or October, or November, 1909.

Q. 1908 you mean, Mr. McCoy? [38]

A. Yes, sir, it was in 1908, from that time on I used a new form of pay-roll that covered the pay-roll expenses, but I still used the voucher plan for sustenance and transportation.

Q. And supplies? A. Yes, sir.

Q. Examine these checks again, Mr. McCoy, are the names of the payees real or fictitious persons in each instance? A. Fictitious.

Q. That is, there were no such persons?

A. No, sir.

Q. Does this apply to each of them to whom these checks were made out? A. Yes, sir.

Q. Examine the endorsements on the back, Mr. McCoy, and state whose individual endorsement is on the back of these checks, if you know. A. I do.

Q. Are these endorsements, one or more on each check, are these the endorsements of real persons or fictitious persons? A. Fictitious persons.

Q. Did the Government receive any services, or supplies or anything of value in exchange for these checks?

Mr. McCORD.—I object to that as incompetent, irrelevant and immaterial.

The COURT.—Objection overruled.

Mr. McCORD.—Exception.

(Testimony of M. P. McCoy.)

The COURT.—Exception allowed.

A. No, sir.

Q. Did you receive the money on these checks, in each instance? A. Yes, sir.

Q. For the amount of the check? A. Yes, sir.

Q. So far as the appearance of these checks go, Mr. McCoy, are they made out in the same form and in the same manner [39] as you made out checks to real persons for real services rendered?

A. They are.

Q. That is, they are apparently regular on their face, are they not? A. Yes, sir.

Q. I believe I asked you if you made the endorsements on the back yourself? A. Yes, sir.

Q. Take, for instance, the first check, October 14, 1907, number one, payable to Albert Peterson, you had no such person as Albert Peterson rendering services at that time? A. No, sir.

Q. You endorsed it Albert Peterson and J. D. King? A. Yes, sir.

Q. And that way you received the money yourself?

A. Yes, sir.

Q. That statement of fact is true of each check?

A. Yes, sir.

Mr. FISHBURNE.—I offer in evidence this bundle of checks, as Plaintiff's Exhibit "A."

Mr. McCORD.—I object as incompetent, irrelevant and immaterial and the instruments not properly identified.

The COURT.—The objection is overruled.

Mr. McCORD.—Exception, your Honor.

(Testimony of M. P. McCoy.)

The COURT.—Exception allowed.

Checks referred to admitted in evidence and marked Plaintiff's Exhibit "A."

Mr. FISHBURNE.—At this time, Mr. McCord, I would like to submit the checks to the jurors, so that they may follow the testimony.

(Addressing the jury and exhibiting checks to the jury.)

These are the checks that have just been testified to. They are not quite in the order they were. If you will kindly keep them as they are. Each month is separated into a smaller package by itself. The voucher number that was referred to [40] in Mr. McCoy's testimony you will find in the upper left hand corner. Just pass those among you, will you, please?

(The jury examined checks embraced in Plaintiff's Exhibit "A.")

Q. You got these bank checks from the National Bank of Commerce when you opened up your account? A. Yes, sir.

Q. Did the cancelled checks come back to you, Mr. McCoy, or were they sent by the bank to the Department? A. They did not come back to me.

Q. Now while you were—during the period that is covered by these checks, you were doing some actual work for the Government, were you not, in the performance of your duties? A. Yes, sir.

Q. How often were you required to send in reports to the department in Washington? A. Weekly.

Q. Did you send in weekly reports during this

(Testimony of M. P. McCoy.)

period covered by these checks in evidence?

A. Yes, sir.

Q. I believe you testified that these checks, so far as appearance goes, are the same as real checks issued to real persons by you? A. Yes, sir.

Q. Now, you spoke, a moment ago, Mr. McCoy, about a voucher system that was prevalent between you and the Department. I will ask you now to take this bundle of vouchers and examine them, these for the—marked for the month of October, 1907. I will take voucher number six as an example. This purports to be signed by Albert Peterson, for services rendered of the amount of twenty dollars, from October 5th, 1907, to October 14, 1907, and down below that is the signature of M. P. McCoy approving the same—is that a genuine or fraudulent voucher?

A. Fraudulent.

Q. You signed the name Albert Peterson? [41]

Q. Then you approved it, with your own signature, as actually rendered to the Government for services?

A. Yes, sir.

Q. Now, will you go through the list of vouchers I hand you, for the month of October, 1907, and state whether or not they correspond with the voucher number noted on the margin of the checks for that same month—you have checked over these vouchers for the various months covered by the fraudulent checks shown as Exhibit "A"? A. Yes, sir.

Q. These vouchers are the vouchers referred to on the margin of the checks? A. Yes, sir, they are.

Q. How often did you send these vouchers to the

(Testimony of M. P. McCoy.)

Department? A. Quarterly.

A. Every three months? A. Yes, sir.

Q. I now hand you another document, certificate for the month of October, 1907, is that your signature, M. P. McCoy, Examiner of Surveys?

A. Yes, sir.

Q. That refers, does it not, to the individual vouchers that you have just examined for that month? A. Yes, sir.

Q. That is a statement that you sent in as a part, or a summary of the quarterly account?

A. Yes, sir.

Mr. FISHBURNE.—I now offer in evidence, as Plaintiff's Exhibit "B" the vouchers just testified to by the witness as having been sent in by him, quarterly, to the Department at Washington, D. C., for the following months; October, 1907;

Mr. McCORD.—And so on. I object to each of them as incompetent, irrelevant and immaterial and for the further reason that they show, in the light of the witness' testimony that they are all fraudulent.

[42]

Mr. FISHBURNE.—If the Court please, the very basis of this suit is that the checks were fraudulent and as a circumstance tending to rebut any evidence of negligence on the part of the Department at Washington, we purpose to show by those vouchers that they were apparently regular, that they complied in every respect with the departmental regulations, practice and custom, that there was nothing so far as the conduct of M. P. McCoy's accounts, contents of

(Testimony of M. P. McCoy.)

his accounts and reports and vouchers, to indicate to the Department of the United States that the fraud was being perpetrated at the time.

Mr. McCORD.—I don't think it makes any difference, your Honor. I think it is wholly immaterial, irrelevant and incompetent whether he sent any vouchers or whether he didn't. The question is the liability on this check.

The COURT.—I will sustain the objection at the present. If the evidence is necessary you may offer it again in rebuttal.

Mr. FISHBURNE.—I would like to make a suggestion while the matter is fresh in your Honor's mind. That is this: The defendant sets up in one of its affirmative defenses that if the Government had been as careful as it should have been in checking up his work it would have detected this fraud at once, or at least after the first report was sent in. Now, the very purpose of this is to rebut that identical charge. If those reports were regular in every respect, then there was nothing to put us upon our guard or notice. The Court will allow us an exception.

The COURT.—I will allow an exception. If the evidence is material at all, it is material in rebuttal of the defendant's defense.

Mr. FISHBURNE.—Very well.

Q. Mr. McCoy, state whether, or not, it is true that these vouchers, just introduced in evidence, were in accordance with the usual and regular method of handing in vouchers that was in use between you and

(Testimony of M. P. McCoy.)

the Department at the time that they were sent in.
[43]

Mr. McCORD.—I make the same objection to that, your Honor.

Mr. FISHBURNE.—It may be stricken out by consent.

Q. Is there anything in the—you say that, along about October, 1908, the Department changed this system of vouchers?

Mr. McCORD.—What do you mean by that?

Mr. FISHBURNE.—It just means that instead of the voucher plan, it was done by pay-rolls system.

Mr. McCORD.—What date was that made?

Mr. FISHBURNE.—October 8, 1908.

Q. Examine these vouchers for October, 1908, and see if that was the new or the old system that was employed—

Mr. McCORD.—I make the same objection to that, your Honor. It is referring to the vouchers which were not admitted in evidence.

The COURT.—Objection sustained.

Mr. FISHBURNE.—I ask an exception.

The COURT.—Exception allowed.

Mr. McCORD.—These same questions I suppose will all go out there, won't they, Mr. McLaren?

Mr. FISHBURNE.—I am just checking it down to each point. You better ask the question each time and have the Court's ruling on it.

Q. That is for sustenance? A. Yes, sir.

Q. You retained the individual voucher system for supplies and material? A. Yes, sir.

(Testimony of M. P. McCoy.)

Q. How is it, Mr. McCoy, that no vouchers are found for the last two months' issue of fraudulent checks, that is, the months of July and August, 1909—did you ever send in any vouchers for those two months?

The COURT.—I will sustain the objection.

Q. It is true, is it not, that the vouchers that you sent in [44] for all of the other months were apparently regular and were in the usual form and manner?

The COURT.—Objection sustained.

Mr. McCORD.—Q. When were you arrested?

A. September, 1909, about September 1st.

Q. You say, Mr. McCoy, that you sent in statements to the Department quarterly, will you examine these—referring, Mr. McCoy, to the voucher for October, 1908, and the other vouchers covered by the fraudulent period, whom did you say these vouchers were sent to?

A. To the Commissioner of the General Land Office.

Q. And were sent quarterly? A. Quarterly.

Q. Now, will you explain, Mr. McCoy, what these accounts are, which I hand you, and which are signed by M. P. McCoy, special disbursement account?

A. That is an account current for the quarter.

Q. Covering the period from October 1st, 1907, to September 31st, 1907? A. Yes, sir.

Mr. FISHBURNE.—Mr. McCord, that should be December 31st, the quarter commencing October 1st.

Mr. McCORD.—It is September here.

(Testimony of M. P. McCoy.)

Q. When you sent these quarterly account current in which you say you did quarterly, did you, or did you not, transmit with them the individual vouchers covering that same period? A. Yes, sir.

Q. Take the next one, from January 1st, 1908, to March 31st, 1908, is that your signature?

A. Yes, sir.

Q. The same is true as to that? A. Yes, sir.

Q. The same is true as to all the vouchers down to a certain point? A. Yes, sir. [45]

Q. Now, calling your attention to the account current from July 1st, 1908, to September 30th, 1908.

A. It is not true of that one. That is not the same thing I had in mind.

Q. Take up the one, running from October 1st, to December 31st, 1908, and examine the leaflets on the inside, the outline of expenditures, the first item, October 31st, is the pay-roll—that was the pay-roll system? A. Yes, sir.

Q. Now, examine all of these quarterly accounts current, which I hand you, they are all signed by yourself, are they not, as special disbursing agent?

A. Yes, sir.

Q. These were sent in by you quarterly?

A. Yes, sir.

Q. And, so far as their form is concerned, they were in due and proper form as was the customary practice of the Department? A. Yes, sir.

Q. Did these vouchers for expenditures, and also the pay-roll vouchers referred to in each of these accounts current, include these fraudulent checks,

(Testimony of M. P. McCoy.)

Exhibit "A"? A. Yes, sir.

Mr. McCORD.—Do you want to offer those?

Mr. FISHBURNE.—Yes, I offer in evidence now as Plaintiff's Exhibit "C" the quarterly accounts current as follows: October 1st, 1907, to December 31st, 1907; January 1st, 1908, to March 31st, 1908; April 1st to June 30th, 1908; and so on down to June 30th, 1909.

Mr. McCORD.—I object to them as incompetent, irrelevant and immaterial.

Mr. FISHBURNE.—The Court, I presume, will make the same preliminary ruling?

The COURT.—The same ruling.

Mr. FISHBURNE.—Allow us an exception.

The COURT.—Exception allowed. [46]

Q. Mr. McCoy, you sent in no quarterly account for the period after June 30th, did you? A. No, sir.

Q. The quarterly account was not yet due at the time you were arrested, is that the reason?

A. Yes, sir.

Q. Is there anything on the face of these quarterly accounts, or upon the individual vouchers or pay-rolls vouchers that indicates any irregularity, or that indicates the practice, or I should say the fraudulent practice or scheme that you were carrying on?

Mr. McCORD.—I object to that as calling for the conclusion of the witness, that being the very thing that the jury is to pass upon, and I object on the further ground that it is incompetent, irrelevant and immaterial, and not the best evidence.

Mr. FISHBURNE.—It raises practically the same

(Testimony of M. P. McCoy.)

question, your Honor, as to the regularity of the reports he was sending in.

The COURT.—Objection overruled. I will sustain that.

Mr. FISHBURNE.—Beg your Honor's pardon.

The COURT.—I will sustain the objection.

Mr. FISHBURNE.—I ask an exception.

The COURT.—Exception allowed.

Q. State what that paper is.

A. An account current.

Q. For the period ending when?

A. September 30th, 1907.

Q. Beginning July 1st, 1907? A. Yes, sir.

Q. Any fraudulent items included in that account current? A. There were.

Q. None of them covered by these checks—I will change the form of that question—is that the usual form for the quarterly account that was in use?

A. Yes, sir. [47]

Q. Can you tell, from an examination of it, whether or not any of these items were improperly allowed?

A. Not from an examination of this alone, I would have to have the checks that correspond and then I could tell.

Mr. FISHBURNE.—I offer Plaintiff's Exhibit "D," a quarterly account.

Mr. McCORD.—I object to it as incompetent, irrelevant and immaterial and not properly identified.

Mr. FISHBURNE.—That is offered, your Honor,

(Testimony of M. P. McCoy.)

for the purpose of comparison of the regular quarterly account that the witness was sending in with the fraudulent one covered by those checks.

The COURT.—I will sustain the objection.

Mr. FISHBURNE.—I ask an exception.

The COURT.—Exception allowed.

Q. You are living in Spokane, Mr. McCoy?

A. Yes, sir, I am.

Cross-examination.

(By Mr. McCORD.)

Q. How long did you say that you occupied the position of examiner of surveys and special disbursing agent?

A. I had the position of examiner of surveys for about nine years, and during four or five years of that time I was special disbursing agent.

Q. Prior to the time that you became special disbursing agent, who attended to that duty of disbursing?

A. I did the disbursing. I paid the expenses of the men and rendered my account to the General Land Office and was reimbursed by check from the Interior Department.

Q. Who advised you in the first instance?

A. The Department advised me in the first instance, of what was necessary.

Q. You advanced your own money?

A. Yes, sir.

Q. After that time you adopted the system—

(Testimony of M. P. McCoy.)

Mr. FISHBURNE.—You don't mean that he adopted the system, the office adopted the system, of course.

Q. After you became disbursing agent and also examiner of surveys, I will ask you where you maintained your office, if you had one?

A. I had no office.

Q. You attended to the surveys in Washington, Idaho and Montana? A. Yes, sir.

Q. Did the Government have any other agent, or assistant but you in the transaction of this business? A. No, sir.

Q. Did they have any other person, or individual or agent upon the ground to assist you in doing this work, or to check your accounts?

A. Do you mean, now, assistants who I employed myself?

Q. Employed by the Government.

A. Well, they were employed by me for the Government.

Q. Who did you employ?

A. My assistants in the field?

Q. Yes, sir.

A. Well, I supposed—I employed assistants to assist me in making the examination of the surveys.

Q. Did the Government employ any other men to aid you? A. No, sir.

Q. In checking your accounts as special disbursing agent—did the Government check your accounts?

A. The Department have special distributing agents—their usual custom.

(Testimony of M. P. McCoy.)

Q. They sent men to Seattle to examine them or do it at Washington?

A. At the General Land Office at Washington.

Q. Were *they out* here, at any time, by anybody?

A. Not that I am aware of.

Q. How did they detect your fraudulent scheme?

[49]

A. Mr. Good, I forget his initials, a special agent of the land office, discovered it there in Montana.

Q. You were not checked up in your field work, or in your agents' work by anybody until shortly before you were arrested during the whole period of time that you were in the service of the Government, is that right? A. That is right.

Q. How many surveys did you attend to—about, in a general way, about how much money did you expend legitimately in the service of the Government between 1900 and 1909?

Mr. FISHBURNE.—I object to that as incompetent, irrelevant and immaterial and also as calling for a conclusion of the witness.

The COURT.—The objection is overruled.

A. I don't remember.

Q. Give it to me approximately.

A. Without looking up the records, I could not say.

Q. In the year 1900, when you went to work for the Government in the capacity of examiner of surveys, until the time of your arrest in 1909, state approximately how much money you expended legitimately for the Government, how much per year

(Testimony of M. P. McCoy.)

would you estimate it.

Mr. FISHBURNE.—I make the same objection.

The COURT.—The objection is overruled.

Mr. FISHBURNE.—I ask an exception to each of those rulings.

The COURT.—Exception allowed.

A. Well, I could not approximate it without looking over my—

Q. Well, about how much business were you doing—you can tell about how much you would do in a year—I am not trying to trap you into anything.

A. If I could give you an approximate statement, I would gladly do so, but without going over the records, I don't see how I could do so.

Q. As much as five thousand dollars? [50]

A. No, sir.

Q. One half of that, twenty-five hundred dollars?

A. No, sir, nothing like that.

Q. One thousand a year, would you say?

A. The very outside limit would be one thousand dollars, I should say.

Q. At any time, did the Government send any one else, so far as you know, to check up your work and see whether this money had been legitimately expended? A. No, sir.

Q. You have misunderstood the question, Mr. McCoy, have you not?

A. It is only a surmise on my part, but I think there was a survey over in the extreme northeast part of Montana, over which several claimants were in litigation, and I think possibly that it was reported

(Testimony of M. P. McCoy.)

that I had not been on the ground to make my examination.

Q. What did this work consist of, examining of surveys?

A. The Government has public lands throughout these states and they make surveys of them.

Q. This is done by United States Deputy Surveyors? A. Yes, sir.

Q. For the Government? A. Yes, sir.

Q. What did you do?

A. Before the Government would accept it, I was sent into the field to make an examination of the survey, whether it was in acceptable form, whether it was correctly done.

Q. Did you go out and run the lines over and resurvey it?

A. I was to approximate ten per cent of the lines run by the party.

Q. As much as ten per cent? A. Yes, sir.

Q. You were supposed to hire assistants to do that? A. Yes, sir.

Q. Surveyors? [51] A. Yes, sir.

Q. Now, Mr. McCoy, you have identified a bunch of checks here, Plaintiff's Exhibit "A," how do you know that these checks are the ones that you issued fraudulently—how can you tell?

A. By recognizing my handwriting.

Q. Every one is a different one, is it not?

A. Yes, sir.

Q. And each individual check has a different signature—do you mean to tell me that, from an exam-

(Testimony of M. P. McCoy.)

ination of these checks that you can tell which ones you forged and which ones the signatures are legal?

Mr. FISHBURNE.—I object to the question as assuming that there is a different payee for each check, which is not the case. There were only twenty-nine different payees in the checks, your Honor, but the checks themselves number over approximately a hundred.

Mr. McCORD.—I think the question is a proper question, your Honor, to show how he got at this.

Mr. FISHBURNE.—I withdraw the objection.

A. I identify these from my own signatures on the check.

Q. When did you do that?

A. At the time the check was issued.

Q. When this list—when these checks were selected out, did you select them? A. No, sir.

Q. Who did? A. I couldn't tell you.

Q. Did you go over the various checks that had been returned, with any body in Washington and assist him in picking the forged checks, that is, those that you forged? A. No, sir.

Q. You did not? A. No, sir.

Q. You have only made a cursory examination of these checks to-day, have you not? [52]

A. Yes, sir.

Q. You have not taken up each one individually and gone through them? A. Yes, sir, each check.

Q. Have you examined the signature on each one?

A. Yes, sir.

Q. I would just like to have you tell me how you

(Testimony of M. P. McCoy.)

can remember five years after each one of these was taken which are genuine and which are not.

A. Well, I know that, during the time that these were issued, that I issued nothing but fraudulent checks.

Q. Did you issue, at any time during the period from 1907 to 1909, anything but fraudulent checks—you don't mean that?

A. None except those that were payable to myself.

Q. From 1907 to 1909 you did nothing then—you did not issue a single check that was valid?

A. Except those to myself.

Q. Except the two hundred and seventy dollars a month. A. Yes, sir, my salary.

Q. Everything else was fraudulent?

A. Yes, sir.

Q. You did no work?

A. I was doing work, but instead of passing checks to the parties that I employed in the field, I would pay them personally.

Q. How much did you pay out in that way?

A. I am unable to state.

Q. About how much would these checks amount to, fifteen thousand dollars, about how much did you expend out of your own funds?

A. I don't think I could even approximate it.

Q. Would you say that you had expended five thousand, one third of that? A. No, sir.

Q. About four thousand dollars?

A. About a couple of thousand dollars. [53]

Q. You have no way of arriving at that estimate?

(Testimony of M. P. McCoy.)

A. No, sir, I have no records.

Q. You think that you have spent about a couple of thousand, or it may be more?

A. It may be more or it may be less.

Q. It may have been as high as five thousand dollars?

A. I don't think it was as high as five thousand.

Q. As much as four thousand?

A. I don't think it was over a couple of thousand.

Q. What were you doing—you say that you paid some men for services rendered, and that you paid it out of your own money—do you know of any of the men that you paid it to? A. No, sir, I do not.

Q. Can't you recall any of them? A. No, sir.

Q. What work did they do for which you paid them?

A. Some were chainmen and some were flagmen and some were teamsters and some of them were stage drivers and some of them livery-stable people.

Q. You did go over onto the different surveys, during the period from 1907 to 1909, to September, 1909, you did carry on the checking of these surveys?

A. Only a part of them. I did a few of them.

Q. You were on all of them, were you not, with the exception of the one in northern Montana?

A. No, sir.

Q. How many all together?

A. I am unable to approximate. The records of the office will show, and I could not even approximate without having those records.

Q. You made up reports on these various surveys

(Testimony of M. P. McCoy.)

and sent them in to the Government? A. Yes, sir.

Q. These reports showed that you had run the lines on at least ten per cent of the surveys, the deputy surveyor's work? A. Yes, sir. [54]

Q. Is that right? A. Yes, sir.

Q. You mean to be understood that you did run ten per cent? A. Yes, sir.

Q. On some you did not run quite ten per cent?

A. I only mean to approximate it.

Q. You actually did the work of about ten per cent of the most of them? A. No, sir, on a few of them.

Q. On others you did part of the work and certified that you did it all. A. Yes, sir.

Q. On all of them, with the exception of in northern Montana, you did some work? A. No, sir.

Q. What others?

A. Well, in quite a majority I did not examine in the field at all.

Q. Didn't do any field work at all? A. No, sir.

Q. You had nobody do it? A. No, sir.

Q. You cannot tell now a single man who worked for you, that you paid, between 1907 and 1909?

A. No, sir, not a single man.

Q. Not a single man? A. No, sir.

Q. Where did you keep this money, at Seattle?

A. No, sir, on the ground. That is, wherever I happened to be making examinations of surveys.

Q. What sort of a report would you send in with the vouchers, would you draw a plat showing the survey?

(Testimony of M. P. McCoy.)

A. No, sir, I would send in the field-notes covering the ground. [55]

Q. You would send in the field-notes you had gotten from the deputy surveyor's work?

A. I didn't get them from the deputy surveyor, I got them from the Surveyor General's Office.

Q. You used the same notes in sending them in?

A. Yes, sir.

Q. If you had done the work individually, they would not have checked with the work in the Surveyor General's Office, would they—if you had made these surveys and run your own lines, it would not have checked correctly with the work in the Surveyor General's Office, would it? A. No, sir.

Q. In checking, did you simply try to run over the lines made by the deputy surveyor on the ground and find his monuments? A. Yes, sir.

Q. And during this time, a period of two years, you simply copied the notes from the Surveyor General's Office?

A. They were not copied, they were faked, we made our—

Q. They were taken from the Surveyor General's Office?

A. The only data we had was taken from the Surveyor General's Office.

Q. They were reproductions of his notes?

A. No, sir.

Q. You went to the Surveyor General's Office and copied them? A. Yes, sir.

Q. Copied them as they were shown in his office?

(Testimony of M. P. McCoy.)

A. No, sir; but I would not send in notes unless they would correspond in a general way.

Q. You would modify them in some way?

A. Yes, sir.

Q. Well, now, then, how did you do when you actually rerun the lines, did you try to make changes in them?

A. No, I would return the conditions as I found them. I [56] would take my own field-notes and my reports would be exact copies of my own field-notes.

Q. Wherever you found the monuments made by the surveyor, in those cases the notes would be identical, but in those notes that you faked from the notes in the Surveyor General's Office—

A. So far as the monuments and as to the topography, they were not the same.

Q. When you faked the notes you were not the same?

A. It is seldom that any two men write up the same notes after going over a certain line.

Q. Now, then, these checks that you draw, where did you cash them, Mr. McCoy?

A. At different places around over the country.

Q. Tell me how you would do it, take the first check for Albert Peterson, for twenty dollars—

A. May I see the check, please?

(Exhibit "A" shown witness.)

Q. The one on the top there, the back of the check shows—

Mr. FISHBURNE.—For the benefit of the jury,

(Testimony of M. P. McCoy.)

the check referred to now is October, 1907, the first one.

A. That I cashed it through the National Bank, or the Columbia Valley Bank of Wenatchee.

Q. Did you take it there yourself? A. No, sir.

Q. How did you arrange that?

A. I sent these checks to this bank, under the name of J. D. King.

Mr. FISHBURNE.—You mean this particular check, you didn't send all of them?

A. This particular check.

Q. J. D. King, who was he?

A. A fictitious name, the same as the rest. I sent these checks to the Columbia Valley Bank in the name of J. D. King.

Q. By mail? A. Yes, sir. [57]

Q. From where?

A. From the points, I don't remember now.

Q. Did the bank send these checks—

A. I opened up an account with the bank and sent these checks for collection.

Q. You opened up an account in the first place?

A. On this particular check as J. D. King.

Q. Did you go there to open it?

A. No, sir, by mail. I sent these checks by mail in the first place.

Q. You opened an account by mail? A. Yes, sir.

Q. Then you checked it out in the same name?

A. Yes, sir.

Q. You forged the name of King to these checks?

A. Yes, sir.

(Testimony of M. P. McCoy.)

Q. How did you get the money—how did they send it to you?

A. Then this was checked out in my favor by this man J. D. King, this fictitious King.

Q. You cashed the checks in that way and sent to you by mail? A. Yes, sir.

Q. Were you ever in the Seattle National Bank?

A. Yes, sir.

Q. Do you remember of any checks paid by them?

A. Yes, sir.

Q. How did you manage that?

A. Under the name of F. M. Clark.

Q. Did you open an account under that name?

A. Yes, sir.

Q. You went in personally? A. Yes, sir.

Q. You would go in there and deposit them yourself? A. Yes, sir.

Q. From time to time? [58] A. Yes, sir.

Q. And then check them out? A. Yes, sir.

Q. How about the Mutual National Bank, how did you manage that?

Mr. McCORD.—Montana National Bank it means, I suppose.

Mr. FISHBURNE.—Yes.

A. That was done by mail, under another name.

Q. Where from?

A. From some part of Montana, wherever I happened to be. I was at different points in Montana.

Q. Would you send more than one check at a time?

A. Yes, sir. I would generally send the bunch for the month.

(Testimony of M. P. McCoy.)

Q. And have them placed to your account?

A. Yes, sir; to the account of these fictitious names.

Q. King? A. Yes, sir, or Clark.

Q. Did you have more than one fictitious name?

A. Yes, sir; the first was J. D. King.

Q. How many accounts did you have with the various banks—you had one under the name of J. D. King and one Clark, and what else?

A. That is all.

Q. And this was done under these two names?

A. Yes, sir; as I remember.

Q. Then you would forge the name of King on the check and make it payable to your order?

A. Yes, sir.

Q. You didn't go and draw the money yourself?

A. No, sir. It was sent by draft to me at Seattle, and I would check it out from wherever I would happen to be.

Q. When did you open the account with the National Bank of Commerce, or did you open it? [59]

A. The National Bank of Commerce, I opened an account there when they adopted this disbursing agent system.

Q. Did you have the opening of the account yourself, or was it done from Washington?

A. The deposit was made there from Washington, and I was notified of the fact.

Q. The deposit was made from Washington?

A. To my credit.

Q. As M. P. McCoy, Special Disbursing Agent?

(Testimony of M. P. McCoy.)

A. Yes, sir.

Q. This was how the account was opened up?

A. Yes, sir.

Q. You were directed to go there and leave your signature? A. Yes, sir.

Q. You went there and left your signature?

A. Yes, sir.

Q. And you drew your money out of that account for various purposes connected with the Government? A. Yes, sir.

Q. Some that were legitimate, and some that were not, that is right, is it not?

A. I checked that money out through other banks.

Q. What—

A. That is on checks cashed in other banks.

Q. You drew checks?

A. Yes, sir, and cashed the checks.

Q. Every one of these checks contains your genuine signature? A. Yes, sir.

Q. And all of these in this bunch, to the best of your knowledge, are fictitious? A. Yes, sir.

Q. Is there anything on the face of these checks to advise or indicate the fact that there was anything fraudulent about them, was there? [60]

Mr. FISHBURNE.—Which bank, the National Bank of Commerce?

A. No, sir; they are regular in every way.

Q. The contents and endorsements are what the law required to be put upon them?

Mr. FISHBURNE.—I object to that as calling for a conclusion of the witness.

(Testimony of M. P. McCoy.)

The COURT.—I sustain the objection.

Q. That is on all of them? A. Yes, sir.

Q. Did you put the—I notice some of them have a voucher, number one voucher from the 6th to the 16th; you showed these vouchers to the bank, did you?

A. No, sir; these vouchers were sent with my quarterly report to the land office at Washington.

Q. You put in these all of the pay-rolls and sustenance and so on—I notice that some of them, or at least I thought some of them had no—did not have vouchers on them?

A. The last ones, several of them, are there not?

Q. Some of these in April—in August, 1909, examine these for August, 1909, did you put notations’—

Mr. McCORD.—I withdraw that question.

Q. Did you exhibit your pay-rolls to the bank?

Mr. McCORD.—It is on the next page.

A. No, sir.

Q. I see these checks, one bunch of them seems to have been paid direct, or part of these checks, take, for instance, the one for one hundred dollars, to J. D. King, the check is dated August 31, 1909, for one hundred dollars, number 13, and August 31, 1909, for sixty-two dollars, in fact all of these for August, with the exception of one or two seem to have been drawn direct without the intervention of any other bank, were they not?

A. No, sir, these were paid through the Seattle National Bank and are stamped indistinctly on the

(Testimony of M. P. McCoy.)

back of them there.

Q. They were paid through the Seattle National Bank? [61] A. Yes, sir.

Q. Now, you referred to your instructions a while ago, from the Government, they authorized you, when this deposit was put there to sign checks for this money in drawing it out, did it not?

Mr. FISHBURNE.—I object to that question as calling for a conclusion of the witness and not the best evidence as to whether the letter of instructions authorized him to sign these checks.

(Discussion.)

The COURT.—I will overrule the objection.

A. Yes, sir.

Q. You had authority from them to draw checks?

A. Yes, sir.

Q. You showed that authority to the bank, I presume, you must have, did you not?

A. Yes, sir, I showed my letter of instructions to Mr. Maxwell, who was at that time cashier of the bank.

Q. And these instructions that you got, you just exhibited them to him, did you not? A. Yes, sir.

Q. You didn't give him any other instructions?

A. No, sir.

Q. Just let him read your instructions?

A. Yes, sir.

Q. The bank had no other instructions, except from reading your letter?

A. I don't know, but I presume—

(Testimony of M. P. McCoy.)

Q. I don't want any of your presumptions—you don't know?

A. I don't know. That letter instructed me to sign checks as Special Disbursing Agent.

Q. No limitation was placed by that letter, or was placed on the bank by that letter, to paying any checks signed by you? A. No, sir.

Q. There were no conditions, it had been remitted direct to [62] the bank to take your signature, and directing you to draw it out upon your signature, that was the size of these instructions, was it not?

A. Yes, sir, the purport of them.

Q. That is the substance?

A. I don't remember the wording exactly, but that is the substance or object of the letter.

Q. To advise the bank that you had authority to draw any money placed to your credit as Special Disbursing Agent?

Mr. FISHBURNE.—I object to that as calling for a conclusion of the witness as to the authority contained in the letter.

The COURT.—I overrule the objection.

Mr. FISHBURNE.—Exception.

The COURT.—Exception allowed.

A. Yes, sir.

Q. Now, the bank, every month, rendered you a statement of your account, did it not?

A. Yes, sir.

Q. And the vouchers, or the checks that you had used were not returned to you? A. No, sir.

Q. A list of them was returned to you in a state-

(Testimony of M. P. McCoy.)

ment of account? A. Yes, sir.

Q. Also the vouchers themselves and a statement were sent to the Department at Washington by the bank—that is, the checks were sent to Washington?

A. I don't know.

Q. You don't know what the custom was?

A. I presume they were but I had no means of knowing.

Q. Your account was balanced up every month?

A. Every quarter, yes, sir.

Q. Every month? A. No, sir.

Q. Was it every quarter?

A. Every quarter. [63]

Q. The cancelled checks were sent to Washington—you understand that it is customary to send them to Washington? A. Yes, sir, I do now.

Q. These checks, so far as you know, were all sent to Washington at least every three months?

A. Yes, sir, I presume they were.

Q. So that your account was balanced up every month between you and the bank? A. Yes, sir.

Q. The bank rendered you a statement every month? A. Yes, sir.

Q. They didn't wait until the end of the quarter, but rendered it every month to you? A. Yes, sir.

Q. They didn't render any to the Department at Washington? A. I don't know, I am sure.

Q. Did the Government, prior to September, 1909, ever make any complaint or criticism of your acts or your dealings with the Government in regard to these examinations of surveys? A. No, sir.

(Testimony of M. P. McCoy.)

Q. They never offered any criticism at all of any kind?

A. Oh, once in a while there would be some item suspended for explanation, as for instance a telegram, a copy of which would have to be sent. Where I had failed to send a copy, or something like that, or some clerical error.

Q. As I understand it, you sent in until October, 1908, you sent in to the Department at Washington vouchers for everything that you expended?

A. Yes, sir.

Q. Purporting to be signed by the men who had done the work or furnished the supplies?

A. Yes, sir.

Q. That is true, is it not? A. Yes, sir. [64]

Q. These were sent in monthly, were they not?

A. Prior to the adoption of the Special Disbursing Agent, yes, sir.

Q. After the adoption of the Special Disbursing Agent scheme, they were sent how often?

A. Quarterly.

Q. When was the disbursing agency feature adopted?

A. I think after the first of October, 1908. That is when we began.

Q. After the account was opened up in the bank in your name as Special Disbursing Agent and as examiner of Surveys, from that time you sent in your vouchers quarterly? A. Yes, sir.

Q. And continued to do that until October, 1908, did you?

(Testimony of M. P. McCoy.)

A. I continued to do that until my arrest in 1909, September, 1909.

Q. You sent in the vouchers, as well as the pay-rolls?

A. No, sir, sent in the pay-rolls after we adopted that plan.

Q. October, 1908?

A. Yes, sir, prior to that time sent in vouchers.

Q. You continued to send in pay-rolls quarterly after October, 1908? A. Yes, sir.

Q. So that throughout the whole history of these transactions, from the time you opened the account in the Bank of Commerce, until you were arrested, you sent in, every three months, vouchers for every dollar you claim to have expended? A. Yes, sir.

Q. These vouchers were used until October, 1908?

A. Yes, sir.

Q. After October, 1908, the labor and services went in under the pay-roll? A. Yes, sir.

Q. You continued to have each member of the pay-roll sign that voucher? A. Yes, sir. [65]

Q. They signed the pay-roll, each member that you claimed pay for services?

A. They signed the pay-roll, yes, sir.

Q. Other services were on independent vouchers?

A. Yes, sir.

Q. That was up to the time of your arrest?

A. Yes, sir.

Q. The Government, at all times then, from 1907 up until the time of your arrest on September 1st, 1909, had these vouchers in its possession?

(Testimony of M. P. McCoy.)

A. Yes, sir.

Q. Now, the Government could, very easily, by sending men out to check up the ground work and field work have ascertained that you had never been over it, could they not? A. Yes, sir.

Q. And that is the way that they finally stumbled onto the illegal practice? A. Yes, sir.

Q. Or it was an easy matter, was it not, to have found out from the people in the vicinity that you had not done this work, was it not, Mr. McCoy?

A. Except in the sparsely settled districts.

Q. If they had made any investigation at all, or if they had enquired for any of these men you claim to have paid money to, they could have ascertained that the men could not have been produced?

A. Yes, sir.

Q. So that by the simplest sort of an investigation they could have found out that there were no such people in existence as those whose names you had given? A. Yes, sir.

Q. Did they ever inquire from you, as to the men who composed these accounts, as to their residence or postoffice address of any of these individuals to whom you claim to have paid money? [66]

A. I think each voucher shows the postoffice address of each man who signed the voucher.

Q. And all of these were fictitious and there was no such person at that place? A. No, sir.

Q. And a letter addressed to them would have been returned uncalled for? A. Yes, sir.

Q. I don't want to embarrass you, Mr. McCoy, but

(Testimony of M. P. McCoy.)

I want to ask you the question because I think it is necessary—when were you arrested and where?

A. It was about the first of September, 1909.

Q. Where were you arrested?

A. At the Lincoln Hotel at Seattle.

Q. With what offense were you charged?

A. The offense of embezzlement of Government funds.

Q. Of what particular embezzlement were you charged with? A. I don't remember.

Mr. FISHBURNE.—I will stipulate that he was indicted, arrested and sentenced for embezzlement covered by the checks shown in Exhibit "A."

Mr. McCORD.—You said you would produce the indictment.

Mr. FISHBURNE.—Do you want the indictment now?

Mr. McCORD.—No, you can put it in. The indictment will be introduced showing the charge against him.

A. Do you know what particular checks made up those you were arrested for embezzling on? What the particular funds were?

A. I don't remember. I was rather embarrassed at the time the indictment was read to me, and I don't remember.

Q. You were sentenced in Seattle?

A. In Tacoma.

Q. Were you tried? A. No. [67]

Q. You pleaded guilty to the indictment and you say that you don't know what was in it?

(Testimony of M. P. McCoy.)

A. No, sir, I don't remember now.

Q. You are now out on parole?

A. No, sir, I am at liberty, my parole expired on the 19th of last month.

Q. So you are completely freed?

A. Yes, sir.

Q. You are not pardoned? A. No, sir.

Q. So that your civil rights have not been restored? A. No, sir.

Q. Did you not make any application in person?

A. No, sir. I made an application for a parole and it was granted.

Q. Mr. McCoy, I will have to go into those a little more in detail, as I don't know how all of these different names here, that is the names of H. M. Benson, A. C. Jenkins, Charles Paine, George K. Cooper, E. M. Bassett, Joe Mikel, A. J. Whitney, F. W. McCulley, George D. Cook, F. M. Clark and J. D. King,"—

Mr. FISHBURNE.—Those are the names referred to in the checks—"all covering the month of August, 1909, I want you to tell me, if you can, how you can go through those and tell now, after the elapsing of five years, which ones of these signatures are fraudulent, and which are not, or that all of them are—I ask you whether you can do that from any independent examination of the signatures, as they now appear, or can you tell only because you were not doing any work during this period of time?

A. I could not identify these from these fictitious signatures, but I can identify them from my own

(Testimony of M. P. McCoy.)

signature having issued the checks.

Q. Well, your signature does not appear on any of those checks—that is the signature of M. P. McCoy, except as the drawer of the check? [68]

A. That is all.

Q. Can you independently say that all of these names placed on these checks and made by you, can you tell now from an examination of those signatures at this time—I don't see how it is possible—tell me whether if you didn't have these passed up to you, and without any other information, whether you could tell whether these were forgeries?

A. No, sir, it would be impossible for me to tell.

Q. If you saw the checks you could not tell that they were forgeries, except, as you say, between 1907 and 1909, you say that you did not issue any legitimate checks? A. Yes, sir.

Q. That is the only way you can tell?

A. Yes, sir.

Q. That is also true of the vouchers, is it not, you could not tell that these were forgeries on the vouchers from an inspection of the vouchers at this time?

A. Yes, sir.

Q. How?

A. Simply by knowing that they were fraudulent.

Q. I say by an examination of the voucher itself, independent of your personal knowledge, you could not tell, it would be an impossibility? A. No, sir.

Q. Now, Mr. McCoy, are you not mistaken in saying that, from 1907, the date of the first of these checks, October 14, 1907, to September 30, 1909, two

(Testimony of M. P. McCoy.)

years that you did not issue a single genuine check?

A. Not as against the National Bank of Commerce.

Q. How do you know that? You transacted business and had men in your employ, and were paying them from some source or other, now is it not possible that some of these checks that you drew were payable for a legitimate purpose and to the men who earned the money? A. No, sir.

Q. Why do you say that? [69]

A. Because whenever I incurred expenses in the field I paid it to the individuals themselves, and in order to carry this thing through I would issue checks against the National Bank of Commerce but only those that were fictitious.

Q. What work were you doing from October, 1907, to September 30, 1909, what particular surveys were you examining?

A. Surveys in the States of Washington, Idaho and Montana. The records would show the title of each survey that is to whom contracts were let, but who they were now, I cannot recollect.

Q. You are sure that you never drew any checks in their favor on the National Bank of Commerce?

A. I am sure of that.

Q. But you used the money that you got from the National Bank of Commerce in paying them?

A. Yes, sir, except those payable to myself.

Q. The money that you got on these fraudulent checks you used, in part, to pay these men?

A. Yes, sir.

Q. How much you have no means of knowing?

(Testimony of M. P. McCoy.)

A. No, sir.

Q. Otherwise that it is from one to four thousand dollars?

A. Yes, sir, somewhere within those sums.

Q. But you did render services to the Government, valuable services, during that period, did you not in examining these surveys? A. Yes, sir.

Q. And employed men to assist you in getting the information you did furnish the Government?

A. Yes, sir.

Q. And you did have men employed by you in examining surveys for the Government?

A. Yes, sir.

Q. I would like to—if you can give me some more correct information as to the amount of money you spent on each particular survey, the number of men you would employ and [70] I would like to have you try to recall, Mr. McCoy, about how much money you spent legitimately from 1907 to 1909, that you paid for out of funds that you carried in this bank.

Mr. FISHBURNE.—Q. Is it your testimony, Mr. McCoy, that the actual services which you did pay for during this period, were paid out of these fraudulent checks, or did you put in a personal check to pay for these services?

A. I got this money individually.

Q. Out of the proceeds of your personal checks?

A. I paid them with my own money.

Q. I want to get this clear—during the time that these fraudulent checks were sent in by you, you also sent in checks payable to yourself for different

(Testimony of M. P. McCoy.)

amounts, did you not? A. Yes, sir.

Q. Was it out of these checks, payable to yourself, that you paid the men that you had employed, or did you pay these men out of the proceeds of these fraudulent checks?

A. I paid them with my own money. How I obtained that money, I obtained part of it by my own salary and over time and part of the money I got from the fraudulent checks.

Q. You kept all of this money in the bank?

A. Yes, sir.

Q. The National Bank of Commerce?

A. Yes, sir.

Q. When you got money from these fraudulent checks and legitimate money, you put them all together in one account? A. Yes, sir.

Q. Whether it was from one source or the other, part was from fraudulent sources and part from other sources? A. Yes, sir.

Q. You could not tell which? A. No, sir.

Q. You have no doubt but that you paid out from one to four thousand dollars for the Government in this way? A. Yes, sir. [71]

Q. Most of it came from the fraudulent checks, because there were more of them? A. Yes, sir.

Q. So that you would say that the biggest part of what you did pay necessarily came from the money that you got on these fraudulent checks, that is the legitimate conclusion, is it not?

A. Well, the amount was so small that I was paying out, compared with what I was getting in, that

(Testimony of M. P. McCoy.)

I would not have any means of knowing where it did come from.

Q. It was all mixed together? A. Yes, sir.

Q. The money which you did use to pay these legitimate expenses and labor was money paid out of your own personal bank account into which you had put the money realized from these fraudulent checks?

A. Yes, sir.

Q. That is right, is it not? A. Yes, sir.

Q. Now, take, for instance, the surveys for the year 1907, can you tell where you examined one—just recollect one where you did any work on it?

A. Without having the records before me, I could not tell that.

Q. It is possible, is it not, that you have paid out more than four thousand dollars?

A. No, sir, I should not estimate it any higher than that.

Q. You think that four thousand is the maximum?

A. Yes, sir.

Q. Would you consider that approximately the sum?

A. I should say a couple of thousand. It might have been more or it might have been less.

Q. It might have been as much as four thousand.

A. It might have been over two thousand.

Q. The last one of these vouchers was sent on September 30, 1907: [72]

A. No, sir, the last one went in—

Q. June 30, 1909.

A. Yes, sir, June 30, 1909.

(Testimony of M. P. McCoy.)

Q. You didn't send in any after that?

A. No, sir.

Q. But you drew quite a number of checks after that, did you not?

A. Yes, sir, I drew checks at the end of July and to the end of August.

Q. Did you keep any account in any other bank than the National Bank of Commerce as Special Disbursing Agent? A. No, sir.

Q. Did the Government not receipt to you for these various accounts that you sent in?

A. No, sir, it was not their practice, but they did, however, at the end of the year send me a statement from the auditor of the interior department of my account and including the account for the past year.

Q. They verified your account at the end of 1907, did they? A. Yes, sir.

Q. And verified it at the end of 1908?

A. Yes, sir.

Q. Tell you it was correct?

A. Yes, sir, letters were sent me from the Auditor of the Interior—from the Auditor of the Treasurer of the Interior Department and sent me these statements, at the end of these periods, stating that my account had been examined and found correct, or that there were some slight discrepancies and that they needed correction, or something of that kind.

Q. What officer of the National Bank of Commerce, did you do your business with, Mr. Maxwell?

A. It was the young man who had charge of the disbursing of the Government funds in the rear of

(Testimony of M. P. McCoy.)

the office, I don't remember his name, in fact I never knew his name. He was one of the bank tellers.

Q. Ever do business with Mr. Backus? [73]

A. No, sir.

Q. Did you ever do business with Mr. Stacey?

A. No, sir.

Q. Did you ever do any business with Mr. Seewell?

A. No, sir.

Q. Mr. Maxwell, you did show him your credentials? A. Yes, sir.

Q. Did you turn your signature over as Special Disbursing Agent? A. Yes, sir.

Q. And your written instructions were to show your orders to the bank, were they?

A. I cannot recall exactly, but I was notified of this sum being placed to my credit in this bank.

Q. You were authorized to draw it out on your signature?

Mr. FISHBURNE.—I object to that, your Honor, as calling for a legal conclusion of the witness.

(Discussion.)

The COURT.—I overrule the objection.

Mr. FISHBURNE.—Exception.

A. Yes, sir.

Q. You showed that to the bank? A. Yes, sir.

Q. You didn't tell them anything about your being unlimited in your power to draw that money?

A. No, sir, I simply showed them my letter.

Q. The letter didn't contain any limitations on your powers? A. No, sir.

Q. It was an unconditional authority?

(Testimony of M. P. McCoy.)

A. Yes, sir, I think the checks were to be signed by myself as Special Disbursing Agent.

Q. With that exception there was no limitation?

A. No, sir.

Q. There was no limitation on the authority of the bank to pay you money? [74]

Mr. FISHBURNE.—Same objection, your Honor.

The COURT.—Objection overruled.

Mr. FISHBURNE.—Exception.

The COURT.—Exception allowed.

A. No, sir. The letter gave me authority to draw it out myself on my own order, but I don't think I could have drawn any checks under that authority payable to myself.

Q. It didn't say anything about it at all?

A. Well, I was to draw this money as Special Disbursing Agent and I don't remember that it limited me at all.

Q. You don't think that anything was stated as to any limitation at all?

A. I don't think that there was any limitation stated.

Q. When you say that you don't think that you could draw checks in favor of your own order, you are getting that from information other than that contained in the letter? A. Yes, sir.

Q. There was nothing in the contents of that letter that indicated that you could not draw it in your own favor?

A. No, sir, not that I can remember.

(Testimony of M. P. McCoy.)

Redirect Examination.

(By Mr. FISHBURNE.)

Q. When were you paroled out, Mr. McCoy?

A. March 15th, last.

Q. March 15, 1911? A. Yes, sir.

Q. You have been steadily employed in the city of Spokane for how long? A. Since June 15th.

Q. For what firm?

A. W. A. Richards, architects.

Mr. McCORD.—That ought to be Ritchie.

Mr. FISHBURNE.—Ritchie, yes.

Q. Since when? [75] A. June 15, 1911.

Q. You have never had any difficulty or trouble with the Government before this transaction of the fraudulent checks during all the time you worked?

A. I never had any trouble with anybody, the Government, or anybody else.

Q. Under your authority from the Government you had no authority to pay out money, or draw checks against the account, except in payment of legitimate bills?

Mr. McCORD.—I object as incompetent, irrelevant and immaterial, and asking for an interpretation of a question of law by the witness.

Mr. FISHBURNE.—I think that is proper, your Honor, in view of the questions asked upon cross-examination.

Mr. McCORD.—(Reading:) “Under your authority from the Government, you had no authority to pay out money, or draw checks against the account, except in payment of legitimate bills?” Now,

(Testimony of M. P. McCoy.)

that is the very question here, your Honor. I object to it as incompetent, irrelevant and immaterial and asking for a conclusion and asking for the interpretation of the contract, what his authority was.

The COURT.—I sustain the objection.

Mr. FISHBURNE.—An exception.

The COURT.—Exception allowed.

Mr. McCORD.—(Reading:) “When you told Mr. McCord that your letter of instructions”—

Mr. FISHBURNE.—That goes with the same ruling. Turn over to the next page.

Mr. McCORD.—The next page.

Mr. FISHBURNE.—Begin next at the second question on page 50.

Mr. McCORD.—The second question?

Mr. FISHBURNE.—Yes.

Q. During the time covered by these checks, you were not doing much of any work—were you doing anything in April, 1908, do you recollect being over at Great Falls, Montana? [76]

A. I don't remember anything specially.

Q. I hand you four vouchers, numbered fifteen, sixteen, seventeen and eighteen, commencing April, 1908, to J. D. King, A. M. Anderson, F. M. Clark and Fred Evans, state whether these were fraudulent.

A. Yes, sir.

Q. You received the money on these vouchers?

A. Yes, sir.

Mr. McCORD.—I make the same objection to that, if your Honor please. I object to it as irrelevant, incompetent and immaterial.

(Testimony of M. P. McCoy.)

Mr. FISHBURNE.—I offer in evidence now these vouchers, Plaintiff's Exhibit "E," being Nos. 15, 16, 17 and 18, upon this theory: it developed on cross-examination by Mr. McCord that there was a possibility, at least a theory that part of the proceeds of these fraudulent checks might have inured to the benefit of the Government in payment, as the witness testified, in cash to the men whom he had employed during the period covered by the checks. I now offer to show by these exhibits that in addition to monies received by him from the fraudulent checks, he handed in vouchers which I now offer in evidence, covering a portion of the same fictitious persons, Anderson, Clark, King and the rest of them. My position is clear. Counsel contends and will contend I presume from the line of cross-examination developed that even although the money was all obtained irregularly and fraudulently from the bank, yet if as a matter of fact he applied a part of that money to the payment of actual bills, that they are entitled to show that, as the Government would not be damaged by that appropriation of that money. Now, I am offering to prove by these exhibits that there were other monies which were used in payment of these actual expenses.

The COURT.—As at present advised, I will rule against you, Mr. Fishburne. If I should change my mind about it, I will let you introduce these. I don't think they are material in this case at all. [77]

Mr. FISHBURNE.—The Court will allow us an exception.

(Testimony of M. P. McCoy.)

The COURT.—Exception allowed.

Q. I hand you voucher for November, to yourself, for two hundred and seventy dollars—can you state whether or not you worked during that month of November, 1907?

Mr. McCORD.—I object to that as immaterial. They are offering that for the same reason I suppose, your Honor. He drew his own check, drawing two hundred and seventy dollars a month.

The COURT.—I will sustain the objection.

(Discussion.)

The COURT.—I will sustain the objection.

Mr. FISHBURNE.—Allow us an exception.

The COURT.—Exception allowed.

Mr. FISHBURNE.—Now, the same objection and the same ruling to the other voucher for December, I presume.

Mr. McCORD.—How far down is the next one, Mr. McLaren?

Mr. FISHBURNE.—I offer in evidence Plaintiff's Exhibit "F," being vouchers for the months of November and December, 1907, in favor of the witness.

Mr. McCORD.—Same objection.

The COURT.—Sustained.

Mr. FISHBURNE.—An exception.

The COURT.—Exception allowed.

Mr. McCORD.—Where do you want me to read now?

Mr. FISHBURNE.—I think the next question is open to question yet.

(Testimony of M. P. McCoy.)

Mr. McCORD.—All right. Which one is the next one?

Mr. FISHBURNE.—“Now, I hand you a certificate, signed by yourself”—on page 51, about the middle of the page.

Mr. McCORD.—Yes.

Q. Now, I hand you a certificate, signed by yourself, for the month of April, 1908, and I will ask you, if, on the first page of this, that is your signature “M. P. McCoy, Examiner of Surveys.” [78]

A. Yes, sir.

Q. Calling your attention to the item of disbursements, as shown by that itemized statement, and calling your further attention to page two, to a certain entry of expenditures, under date of April 8th. “To J. J. Carlton, Darby, Montana, for hire two horses and buggy, with driver, expenses, etc., eighteen dollars,” is that part of a voucher that you returned under that heading? A. It is.

Q. Calling your attention to the second portion, marked page three, under date of April 30th, 1908, “To J. D. King, Great Falls, Montana, for services as chainman, from April 19 to 30 inclusive, twelve days, twenty-four dollars.” Is that the same J. D. King the fictitious person? A. Yes, sir.

Q. To F. M. Clark, Great Falls, Montana, services as chainman, twelve days, two dollars, twenty-four dollars; is that the same fictitious person?

A. Yes, sir.

Q. Fred Evans, Conrad, Montana, for board and lodging assistants, J. D. King and F. M. Clark, John

(Testimony of M. P. McCoy.)

Howard, E. M. Roper and A. M. Anderson, forty-five dollars and six cents, those are the same fictitious persons? A. Yes, sir.

Q. Calling your attention to page two of this itemized statement, April 21st, "To J. L. Murray, Helena, Montana, for board and lodging assistants, J. D. King and F. M. Clark April 21, four dollars." Those are fictitious persons, are they?

A. Yes, sir.

Q. Ray Jones, Great Falls, Montana, for board and lodging assistants, J. D. King and F. M. Clark, April 22d, three dollars, that is fictitious, is it not?

A. Yes, sir.

Mr. FISHBURNE.—I offer in evidence now Plaintiff's Exhibit "G," being the certificate of Mr. McCoy during the month [79] of April, 1908, consisting of two separate parts, the substance of which has been referred to in the previous questions.

Mr. McCORD.—I have no objection to those two.

The COURT.—They may go in.

Certificate referred to admitted in evidence and marked Plaintiff's Exhibit "G."

Q. You testified a while ago that during this period covered by the fraudulent checks, you were doing some work, is that true? A. Yes, sir.

Q. That is on different surveys?

A. Yes, sir.

Q. You also testified that you had paid these men money, did you employ the cash which you received on your own checks?

A. Yes, sir, I paid them in cash.

(Testimony of M. P. McCoy.)

Q. You testified further that you thought that the cash might have been from the proceeds of these fraudulent checks?

A. Possibly, I mean, that is all.

Q. Is it not true, as shown by the statement in Exhibit "G," which I have just shown you, that you had also received other money which you were not entitled to and which you didn't earn which is not covered by these checks?

A. Yes, sir.

Q. When you say that possibly some real services may have been paid out of these fraudulent checks, you don't know whether it is true or not?

A. Yes, sir, I know it was true.

Q. How much was there of it?

A. Well, I am unable to tell how much.

Q. How can you tell that it was not paid out of these fraudulent checks?

A. I cannot tell that it was out of these fraudulent checks, but it was out of my money.

Q. You cannot tell that it was not paid out of these fraudulent checks? [80]

A. No, sir, I paid it out of money that I obtained whether it was from my salary, per diem or from these I cannot say.

Q. Do you recall, Mr. McCoy, how the expenses covered by these vouchers, for April, 1908, were paid to these fictitious persons named in there—to refresh your recollection, I will call your attention to the month of April, 1908, as to the fraudulent checks in this case, do you recollect how they were paid?

A. That was done prior to my appointment as

(Testimony of M. P. McCoy.)

Special Disbursing Agent.

Q. In 1908, this is in April and the appointment was—

A. I don't understand why this—during part of this year I was addressed as special agent of the General Land Office, and I acted as special agent under instructions from the commissioner of the General Land Office, and during that time I was examining applications for surveys for different people around there over the different states in which I traveled and during that time I was acting as special agent and not as disbursing agent, and this month covers both, where I was acting as special agent and also as examiner of surveys.

Q. How about May, 1908? A. Yes, sir.

Q. How about March, 1908?

A. Yes, sir, the same way.

Q. I will call your attention to the itemized report for March, 1908, that is your signature M. P. McCoy, Examiner of Surveys? A. Yes, sir.

Q. Disbursements as shown by within itemized statement and vouchers, one hundred and seventy-five dollars and twenty cents, that is the amount of the items set forth on the inside pages, is it not?

A. Yes, sir.

Mr. McCORD.—I object to that, your Honor, as irrelevant, incompetent and immaterial and not the best evidence. The document itself your Honor ruled out. [81]

Mr. FISHBURNE.—I beg pardon.

Mr. McCORD.—It is the contents of an instrument

(Testimony of M. P. McCoy.)

that the court has already ruled would not be admitted.

The COURT.—I sustain the objection.

Mr. FISHBURNE.—Exception.

The COURT.—Exception allowed.

Q. Is it not true, Mr. McCoy, that all of the actual services which you did incur, during the period covered by the fraudulent checks, were as a matter of fact itemized in your various reports, sent in and paid by the Government's money, either to you or to the persons whom you had hired by checks outside of these fraudulent checks which you have before you? A. Yes, sir.

Q. Then it could not be possible, if this is correct, that you paid for any of the actual services rendered out of the fraudulent checks, that would not be possible?

A. It is possible in this way, that I had money obtained by fraud and also money obtained legitimately—

Q. Is it not also true that all the money that you obtained legitimately would be paid through vouchers and checks other than these fraudulent ones?

A. No, sir.

Q. Then why did you send in such a voucher as is shown on March, 1908, and also in April, 1908?

A. That is when I was acting as special agent for the General Land Office.

Q. Not disbursing any?

A. I was not disbursing anything, but I was paying my railroad expenses and hotel bills.

(Testimony of M. P. McCoy.)

Q. During these two months is it not true that you put in accounts for King and Clark—

A. That was during the latter part of the month, April when I was acting as examiner of surveys.

Q. I believe that you testified that you signed all of these vouchers and reports shown in exhibit "B," as M. P. McCoy, Examiner of Surveys? [82]

A. Yes, sir.

Q. Mr. McCoy in reference to your field-notes, which you say were faked, during the time that you were not actually doing the work, as I understand your testimony in answer to Mr. McCord, you modified the field-notes of the surveyor general so as to give them the appearance of being genuine?

A. Yes, sir.

Recross-examination.

(By Mr. McCORD.)

Q. You say that these vouchers which you refer to, Exhibit "G," covering the months of March and April, 1908, that then you were acting as special agent for the land department?

A. During part of the time.

Q. And in that case you rendered an account of the work you did and received the money for it, did you? A. That is the way I remember it.

Q. Well, now, then, how long did you act as special agent of the department approximately?

A. Well, during each spring, for a month or two.

Q. So that in 1908 and 1909 you were also acting as special agent?

A. Yes, sir. No, excuse me; in 1909 I am under

(Testimony of M. P. McCoy.)

the impression that I did not act as special agent.

Q. During this whole time you draw two hundred and seventy dollars a month, you were busy with Government work all the time yourself?

A. Yes, sir.

Q. Do you consider that you earned the two hundred and seventy dollars a month, yourself?

A. No, sir. I didn't when I was acting as special agent.

Q. Part of the time you say you were—you had men employed doing legitimate work making surveys during the time that you were entitled to your salary? A. Yes, sir.

Q. On most of them covering this early period, you yourself [83] were engaged, were you not in tending to the work you were having done, you said that you had quite a considerable work done in examining surveys and running lines and you were employed by the Government and you were receiving money from the Government at that time, were you not? A. Yes, sir.

Q. So that during most of your time you would consider that you were fairly entitled to the money that you drew, two hundred and seventy dollars per month?

A. No, sir, not during the last two years, I didn't consider that I did.

Q. They paid you your salary? A. Yes, sir.

Q. They never objected to paying it at any time, they never raised any question about paying you?

A. Yes, sir, small ones.

(Testimony of M. P. McCoy.)

Q. They never sued you to recover it back?

A. Not that I am aware of.

Q. How long a time, Mr. McCoy, did you spend in the penitentiary at McNiels Island?

A. A year and a half.

Q. How long were you sentenced for?

A. Three years.

Q. You were paroled after about a year and a half? A. Yes, sir.

Redirect Examination.

(By Mr. FISHBURNE.)

Q. You have just testified, Mr. McCoy, that you received your salary during all of that period and that the Government didn't protest the payment of your salary—I presume that you refer to your monthly vouchers which are shown in Plaintiff's Exhibit "B"? A. Yes, sir.

Q. And which you have certified as being correct?

A. Yes, sir. [84]

Q. On these vouchers is the alleged residence of the fictitious persons in each case, the place where they were supposed to have been living at that time?

A. Yes, sir.

Q. You didn't do any work during the summer of 1909? A. No, sir.

Q. Did you ever do any work—

A. Except early in the spring.

Q. Can you tell approximately how many months' pay you had rendered services for during the period covered by the vouchers you sent in—I don't mean exactly but somewhere nearly?

(Testimony of M. P. McCoy.)

A. No, sir, I could not tell you that.

Q. Can you tell by consulting the names and addresses, Mr. McCoy?

A. No, sir, the only way I could tell it would be by having a list of the surveys, but I could not tell it from any information that I have here.

Q. Could you tell from the Great Falls, Montana— A. I was there mostly as special agent.

Q. During the period covered by these checks, however? A. Yes, sir.

Q. There were no checks between January, 1908, and May, 1908, during the spring while you were examining these surveys and not disbursing any?

A. No, sir.

Mr. FISHBURNE.—In view of the cross-examination developed by Mr. McCord, I now renew my offer in evidence of Exhibit “B,” being the vouchers that were sent in by the witness and concerning which Mr. McCord examined the witness freely upon cross-examination.

Mr. McCORD.—I object to it as incompetent, irrelevant and immaterial.

The COURT.—I sustain the objection.

[Testimony of W. G. Good, for Plaintiff.]

W. G. GOOD, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:
[85]

Direct Examination.

(By Mr. FISHBURNE.)

Q. Will you state your name to the Clerk, Mr. Good? A. W. A. Good.

(Testimony of W. G. Good.)

Q. W. G. Good; G-o-o-d? A. Yes, sir.

Q. What is your position with the Government service, Mr. Good?

A. Special agent of the General Land Office.

Q. How long have you held that position?

A. A little over seven years.

Q. How long have you been in the Government service all told, Mr. Good? A. Seven years.

Q. Approximately?

A. Seven years the first of February.

Q. Were you in that position in the summer and fall of 1909? A. I was.

Q. Are you familiar with the method and custom of the department at that time as to checking up the surveys of public lands that had been made by contract? If you are not, say so, and I will—

A. Wouldn't say that I am familiar with checking up surveys.

Q. No, I mean the method.

A. Yes, sir, in a way, yes, sir.

Q. Will you explain to the jury, Mr. Good, how the Government has its public lands surveyed in the State of Washington and adjoining States, and then how those surveys are checked up, if in any way.

Mr. McCORD.—Are you a surveyor? Have you ever been in the land department as a surveyor?

The WITNESS.—No, sir, I am not a surveyor.

Mr. McCORD.—I don't think the witness is qualified to testify. [86]

Mr. FISHBURNE.—I will qualify him.

Q. Are you familiar, Mr. Good, with the method

(Testimony of W. G. Good.)

and practice of the Department in making its surveys and checking them up?

A. Well, I am familiar with the method of letting contracts and the way they are checked up by the examiner of surveys, and so forth.

Q. That is what I mean.

A. Yes, sir, I know how that procedure is gone through with.

Q. Now, will you explain that procedure to the jury?

Mr. McCORD.—I object. The witness has not shown himself to have qualifications at all.

The COURT.—I will overrule the objection.

Mr. McCORD.—I object as incompetent, irrelevant and immaterial.

Q. Proceed, Mr. Good.

The COURT.—Well, I don't know how material it is in this case to go into that.

Mr. FISHBURNE.—I will withdraw that question for the present, then, if the Court please.

Q. Now, refreshing your recollection, Mr. Good, do you recollect anything about the transactions of one M. P. McCoy during the summer of 1909 while he was acting as special disbursing agent?

A. I do, yes, sir.

Q. State whether or not you made any investigation of charges of irregularities against him in his work with the Government? A. I did.

Q. What were those investigations, Mr. Good?

A. Why, I investigated his—I tried to investigate his work on the Colville Reservation here in 1909,

(Testimony of W. G. Good.)

the summer of 1909; also some work that he did in Montana in 1908 on different surveys that he was supposed to be checking up.

Q. To refresh your memory, Mr. Good, I will ask you to examine some of these checks which are marked Plaintiff's Exhibit [87] "A" and state whether or not you made any investigations to determine whether the payees in those checks or the names as shown as payees in those checks were fictitious or otherwise.

Mr. McCORD.—I object to that as incompetent, irrelevant and immaterial.

Mr. FISHBURNE.—I expect to prove by this witness that these persons were fictitious persons, the names were fictitious.

The COURT.—The objection is overruled.

Q. Did you make such investigation, Mr. Good?

A. I did as to the supposed employees working for Mr. McCoy during the year 1909 and 1908.

Q. Was that investigation made at the places where these parties' residences were supposed to be?

Mr. McCORD.—I object to that as leading, irrelevant, incompetent and immaterial.

Mr. FISHBURNE.—I will change the form of question, Mr. McCord. It doesn't make any difference.

Mr. McCORD.—I don't care about the leading part of it. I object to it as incompetent, irrelevant and immaterial.

Q. Did you find any such person as J. D. King?

A. I did not.

(Testimony of W. G. Good.)

Mr. McCORD.—Ask him where he examined or something of that kind. Such a question without stating where is too indefinite.

The COURT.—Well, he can't tell it all at once. He has got to have a beginning somewhere. I overrule the objection.

Mr. McCORD.—Exception.

The WITNESS.—In the first place, I called for the—on the Commissioner of the General Land Office for Mr. McCoy's monthly and quarterly statements of his accounts to ascertain the name—

Mr. McCORD.—What is that?

The WITNESS.—To ascertain the names of the people that he was supposed to have working for him.

Mr. McCORD.—I move to strike out that, your Honor, [88] as not the best evidence. He gathered certain information from certain public records in Washington.

Mr. FISHBURNE.—That is simply preliminary and leading up to the investigation.

The COURT.—Objection overruled. Motion to strike out denied.

Mr. McCORD.—Exception.

Q. Proceed, Mr. Good.

A. And those statements, those quarterly statements, also vouchers, set out the different men that he was supposed to have had working for him.

Mr. McCORD.—I move to strike out, your Honor, from the witness' testimony the statement as to what certain public records in Washington showed as not

(Testimony of W. G. Good.)

the best evidence.

Mr. FISHBURNE.—I have offered those same vouchers and counsel objected to them. I don't think it lies now with him to object as secondary evidence.

Mr. McCORD.—It is not secondary evidence.

The COURT.—The motion to strike out is denied. The objection is overruled.

Mr. McCORD.—The Court will allow me an exception.

The COURT.—Exception allowed.

Q. Proceed, Mr. Good.

A. And to secure the addresses of the different employees and in that way I had some grounds to work on to look up these people. This man King was supposed to be from Great Falls.

Mr. McCORD.—I move to strike out that, your Honor, where he was supposed to be from, as wholly immaterial, irrelevant and incompetent.

The COURT.—You need not repeat that every time. I will let you have a bill of exceptions and have it all in. I am going to let him testify about his whole investigation.

Mr. McCORD.—Understand I have an exception to all. I don't desire to impede the progress of the trial.

The COURT.—You may have your exception.
[89]

Q. Go ahead, Mr. Good.

A. Well, I found out the addresses of these different employees and the names of the employees as set

(Testimony of W. G. Good.)

out in Mr. McCoy's vouchers and checks and so forth, and I went to the different places where these different addresses were given to try to locate these different employees, different places in Montana, Great Falls, Benton, Culbertson, and Glasgow, I made a thorough search for these different employees and was unable to find any such men as set out in his accounts and his statement of expenditures and also as to the checks that were issued in payment for services and labor.

A JUROR.—Will you speak a little louder?

Mr. FISHBURNE.—The juror didn't get the last part of your answer. Will you repeat the last portion of your answer, that you didn't find any of the persons named?

A. Yes, sir, as set out in checks and vouchers that he rendered a statement—he rendered a statement every month of his expenditures and he set out in all those monthly statements the employees that he had under him and for supplies and so forth that he purchased during that month, that is where I ascertained the names of the different employees and amount of supplies that he bought from different concerns, got the full statement of the Commissioner of the General Land Office as to his expenditures for each and every month.

Q. As a result of that investigation did you find all of those persons named as payees in the checks, Exhibit "A," were real or fictitious persons?

A. I was unable to locate a single one.

Q. You examined in each case, did you, the locality

(Testimony of W. G. Good.)

where they were supposed to have been employed?

A. I did for the years 1908 and 1909.

Q. About what length of time did your investigation consume, Mr. Good?

A. About six weeks all told. [90]

Cross-examination.

(By Mr. McCORD.)

Q. Have you gone through all of these checks in Exhibit "A" recently? A. I have not, no, sir.

Q. You don't know whether those are the checks that you were investigating five or six years ago or not, do you?

A. When I was here in September or August, 1909, I secured from the National Bank of Commerce quite a bunch of checks that they had on hand that they had not transmitted to the commissioner of the General Land Office, to the treasury department at that time, they were the only checks that I ever saw in connection with Mr. McCoy's account; the others had been sent to Washington.

Q. Do you know what checks you ever saw—are those the checks—are you able to tell which ones you got from the National Bank of Commerce here in September, 1909?

A. Well, I had all the checks that were cashed, and if I remember right, for July and August at that time.

Q. July and August at that time?

A. Yes, sir, the bank turned them over to me and I had them in my possession for several days.

Q. Now, all these checks that have been introduced

(Testimony of W. G. Good.)

here and what is known as Exhibit "A," covering this entire length of time, did you ever go over these checks and examine them?

A. Not to-day; no, sir.

Q. What? A. Not to-day; no.

Q. Well, when did you examine them?

A. I have not examined any of these checks; I haven't seen them before until I just came in here except if any checks are included here that I saw while I was here in 1909.

Q. As a matter of fact, the only checks that you have ever seen in this McCoy transaction were the few checks in the months of July and August, 1909, that you got from the National Bank of Commerce?
[91]

A. That is all, yes, sir, at that time.

Q. Now, as a matter of fact, you only got the checks for the last month in 1909, did you not?

A. I think it covered July and August; I think they made a quarterly return to the—

Q. As a matter of fact, don't you know that they make a return or did make a return monthly and did send in the checks monthly?

A. They might have; however, since you brought the matter up, they didn't make a return at that time for July and I got the checks for July and August, for two months at that time.

Q. You never examined any other checks except those?

A. No, I wasn't in a position to; they were in Washington.

(Testimony of W. G. Good.)

Q. And you never examined them in Washington either, did you? A. No, sir.

Q. You never saw them? A. No, sir.

Q. And whether or not the checks referred to, the fictitious people referred to in these checks were the ones that you examined over in Montana or not you don't know? A. No.

Q. Except that they are similar names?

A. I never saw the checks before.

Q. You don't remember those names, King and all that bunch of twenty-five or thirty names, do you?

A. Well, going through here I could recall these names, checking up my work that I went through a year and a half ago or two years ago.

Q. Take the examination of the surveys in Montana where the men were supposed to be employed, the parties living, some of them at Glasgow, you said?

A. Yes, sir.

Q. What sort of an investigation did you make?
[92]

A. Well, as I said I secured from the office in Washington his original—

Q. I understand you got the names in Washington? A. Got his original vouchers and his—

Q. Got the names and the purported addresses and you went out to investigate. What did you find?

A. I had the original pay-rolls signed by these different parties and also the vouchers that I secured, were sent to me.

Q. What I want to get at is what investigation did

(Testimony of W. G. Good.)

you make. Did you go to Great Falls and investigate there?

A. Tried to locate these parties, yes, sir.

Q. What sort of an investigation did you make? How extensive? What did you do?

A. Well, I went to Great Falls for instance.

Q. Well, I want to know what you—

A. Ascertained from the postmaster, directory, any way possible to locate a certain man that I was after that was supposed to live at Great Falls. For instance, I went to the County Surveyor's office, took it for granted that these men were surveyors, to ascertain whether there was such a surveyor living in that part of the country.

Q. You didn't find any of them?

A. Couldn't locate a single man.

Q. And, as a matter of fact, after you made that investigation as to one or two men you reached the conclusion that they were all forgeries, didn't you?

A. I beg your pardon?

Q. Did you run down each man in the same way?

A. I did.

Q. I will ask you if it was upon your investigation that the Government reached the conclusion that this particular package of checks, aggregating \$15,000, were fraudulent.

A. Why, I made a report on the case and also what I gathered from the man that wrote the checks, Mr. McCoy admitted they were all forgeries to me. [93]

Q. In other words, your report was based on what

(Testimony of W. G. Good.)

Mr. McCoy told you and your investigation in a cursory way?

A. And what I heard in court at Tacoma when he was found guilty.

Q. When you found Mr. McCoy was guilty of perpetrating frauds you didn't spend very much time in tracing it down, did you?

A. It was not necessary.

Q. That is what I say.

A. He admitted everything.

Q. You knew the man was guilty, he admitted he was guilty, he admitted that he had robbed the Government and proved unfaithful to his trust and you were not busy in making any further investigations, were you? A. Not after that.

Q. And, as a matter of fact, the list of checks made up there now is based entirely upon the testimony of Mr. McCoy, isn't it, that is except for probably the months of July and August, 1909?

A. Why, I am sure I don't know; I don't quite understand what you are trying to get at.

Q. What I am trying to get at is this: I say in determining the fraudulent checks that had been issued the Government acted upon your report you say and you acted on Mr. McCoy's statement, didn't you, for the most part?

A. To a certain extent, yes; I couldn't ascertain who these men were and he admitted that there weren't such men and the checks were all fraudulent and—

Q. And when he admitted that, you were ready to

(Testimony of W. G. Good.)

assume that it was all true, weren't you?

A. Well, so far as the investigation that I made, I found out that to be a fact.

Q. Well, you made the investigation before you had him arrested? A. I did, yes, sir.

Q. But you didn't make it covering his entire work for the [94] two or three years; you only had him indicted or had him charged with the embezzlement of a few sums, did you not?

A. He was indicted here for depredations that took place here in Washington, yes.

Q. I understand that, but it was only one particular item, wasn't it, or two?

Mr. FISHBURNE.—That is objected to as not calling for the best evidence.

Q. I ask if you know.

A. Covering his shortages here for the past year, that is what he was indicted for here.

Q. You have not seen the indictment yourself, have you? A. I did see it.

Q. You don't remember that? A. No.

Q. You couldn't tell. That would not be the best evidence. A. That is a matter of record.

Q. What I am getting at is this: when you went over into northern Montana, you were the fellow that got onto his scheme, weren't you, Mr. Good?

A. Yes, sir.

Q. A couple of men up in northern Montana somewhere got into a row over a homestead and you went up there as special agent to investigate it, didn't you?

A. No, I beg your pardon.

(Testimony of W. G. Good.)

The COURT.—It is now time to adjourn. We will adjourn until to-morrow morning at ten o'clock. Gentlemen of the jury, until that time you will be permitted to separate. You are instructed that while you are out of court you must not talk about this case or any subject matter connected with it. You will not discuss it between yourselves or anyone or listen to what anybody may say about the case out of court. You are also especially instructed to have no conversation on [95] any subject whatever either with the witnesses or attorneys or parties interested.

(Further proceedings continued until 10 o'clock A. M., March 13, 1912.)

March 13, 1912, 10 o'clock A. M.

All present and the jury in the box.

Proceedings continued as follows:

W. G. GOOD on the stand.

Cross-examination (Resumed).

(By Mr. McCORD.)

Q. Mr. Good, you stated that you made certain investigations over in Montana as to the reality of these various payees named in the checks; did you make any investigation in any other State as to those that were issued fraudulently, covering surveys, purported surveys, in the State of Washington or the State of Idaho?

A. I only took up those in Montana and the ones here he was supposed to have been working on at the time that he was arrested.

(Testimony of W. G. Good.)

Redirect Examination.

(By Mr. FISHBURNE.)

Q. Mr. Good, you say you investigated his reports at Colville on the Colville Reservation where he was supposed to be working at the time he was arrested?

A. Yes, sir.

Q. Where was Mr. McCoy staying at the time he was supposed to be working at Colville?

A. Right here in this city.

Q. How long had he been staying here?

A. All that summer.

Q. The summer of 1909? A. Yes, sir.

Q. Now, you testified on cross-examination of Mr. McCord, [96] that you made an examination over in Montana and then later interviewed Mr. McCoy himself in Seattle. I want to ask you, Mr. Good, if you made an investigation regarding Mr. McCoy's work and reports at Great Falls, Montana?

A. I did so far as trying to locate the employees that he was supposed to have working for him.

Q. Did you make an investigation there to find J. D. King?

A. I did; I think his address was Great Falls.

Q. Did you find him? A. No, sir.

Q. Did you find F. M. Clark? A. I did not.

Q. A. J. Whitney? A. I did not.

Q. D. H. Sullivan? A. I did not.

Q. S. F. Cady? A. I did not.

Q. All of those names were supposed to be the names of employees at or near Great Falls, were they not?

(Testimony of W. G. Good.)

A. Their postoffice address was given as Great Falls.

Q. On the voucher that you spoke about?

A. Yes, sir.

Q. Now, did you make a similar investigation at Culbertson, Montana?

A. I did as to two or three parties there.

Q. You mean as to the parties supposed to be employed at that place? A. Yes, sir.

Q. Did you find there any George D. Cook?

A. I did not.

Q. Or F. M. McCulley? A. I did not.

Q. Did you make a similar investigation at Benton or Fort Benton, Montana?

A. I did as to one man I think there. [97]

Q. What man was that? To refresh your memory, was that H. M. Benson?

A. That is the name; yes, sir.

Q. Did you find H. M. Benson? A. I did not.

Q. What effort did you make to find any such person?

A. I made every effort possible to locate a man in a place of that kind by making inquiries from business men, the postmaster and so forth, men that have lived there for years that I knew of and supposed to know every one in the community, made a diligent search.

Q. Now, at the Colville Reservation in the State of Washington, Mr. Good, you say you made an investigation of Mr. McCoy's supposed work and employees? A. I did.

(Testimony of W. G. Good.)

Q. Did you investigate to learn whether one A. C. Jenkins was a real or fictitious person at Colville or near there? A. I did.

Q. Did you find any such person as A. C. Jenkins?
A. I couldn't locate him at all.

Q. You used the same methods of investigation there as you have described already? A. Yes, sir.

Q. What did you find as the result of these investigations as to whether or not Mr. McCoy himself had been on these public surveys doing the work that was indicated in his reports?

A. I couldn't learn that he had been on the ground himself at all.

Q. You couldn't learn that he had been on the ground at all? A. No, sir.

Q. And it was after making an investigation, as you have just testified to that you then came over and interviewed Mr. McCoy himself?

A. Yes, sir; all my evidence was negative, I couldn't locate a single man that was supposed to be employed by Mr. McCoy; [98] I couldn't learn where he had been on the ground himself and I simply had to confront Mr. McCoy in relation to it. [99]

(Witness excused.)

W. G. GOOD, being recalled as a witness on behalf of the plaintiff, testified as follows:

(By Mr. FISHBURNE.)

Q. Mr. Good, you have testified already that you called at the National Bank of Commerce at the time you were making the investigation regarding Mr.

(Testimony of W. G. Good.)

McCoy. Do you recollect which ones of these checks now in evidence, if any, the bank still had in its possession at that time?

A. They had the checks that were issued for July and August?

Q. Of 1909? A. Two months, yes, sir.

Q. What statements, if any, did you make to the officials of the bank at that time regarding those checks, regarding Mr. McCoy's transactions?

A. I secured the checks—

Mr. McCORD.—I object to that as to any statements he made so far as their being binding upon this defendant is concerned. This witness was trying to get evidence against Mr. McCoy. He was not authorized by the United States to bind the United States by any representations he might have made.

Mr. FISHBURNE.—I am proving notice to the bank, your Honor.

The COURT.—I will overrule the objection.

Mr. McCORD.—Exception.

A. (Continuing.) Well, in the first place, of course when I approached the bank I told them what my purpose was and what I was there for, that I was investigating Mr. McCoy's business methods, and if I remember right, I had a letter to the bank by Mr. Todd, I think, issued by Mr. Todd; however, they were very frank and secured these checks for July and August, and I had them in my possession for three or four days.

Q. And you returned them to the bank?

A. I returned them to the bank, and after—I think

(Testimony of W. G. Good.)

it was after Mr. McCoy plead guilty and I advised them of what took place in connection with Mr. McCoy and that those checks were fraudulent and that he admitted it, and so forth.

Q. And you told the banking officers, did you, that the checks were fraudulent? A. Oh, yes.

Q. And in what way they were fraudulent? [100]

A. Yes, sir, I gave them the history of the whole case and the transactions in connection with my investigation at that time.

Q. You left the checks in their possession?

A. Oh, yes, I returned them.

Cross-examination.

(By Mr. McCORD.)

Q. Whom did you have your conversation with?

A. Now, I can't recall the gentleman's name; there was two men, one man had charge of the Government's disbursing accounts, and then there was a young man there, either assistant cashier—I can't recall his name now.

Q. It was not an officer of the bank; you don't know whether it was or not?

A. He had some title—assistant cashier, I think he was.

(Witness excused.)

Mr. FISHBURNE. I offer in evidence as Plaintiff's Exhibit "K" a—

(Paper handed to Mr. McCord.)

Mr. FISHBURNE.—I offer in evidence as Plaintiff's Exhibit "K" a certain letter dated March 4, 1910, addressed to the National Bank of Commerce,

by the United States Attorney of Seattle, accompanied by a list of all the checks in dispute, which letter offers the bank permission to examine the checks at any time by its officials or by its attorneys.

Mr. McCORD.—I object to it as irrelevant, incompetent and immaterial.

Mr. FISHBURNE.—You will find the return of the marshal attached to the letter, showing service on the bank.

The COURT.—I overrule the objection. It may be admitted.

Letter referred to admitted in evidence and marked Plaintiff's Exhibit "K."

[Testimony of C. W. McKercher, for Plaintiff.]

C. W. McKERCHER, called as a witness on behalf of the plaintiff, being first duly sworn, testified as follows:

Direct Examination.

(By Mr. FISHBURNE.)

Q. Your name is C. W. McKercher?

A. It is. [101]

Q. You are a clerk in the United States attorney's office? A. Yes, sir.

Q. Do you recollect any official or employee of the National Bank of Commerce calling upon you in response to this letter which I hand you, Exhibit "K"?

A. I don't know that it was in response to that letter; Mr. Brownell, Chief Clerk at the bank, called.

Q. For what purpose did he call?

Mr. McCORD.—I object to that as incompetent,

(Testimony of C. W. McKercher.)

irrelevant, immaterial and hearsay. The clerk of the bank would not be able to bind this bank.

The COURT.—I overrule the objection.

A. He called to see the indorsements on the checks.

Q. The indorsements on these checks in dispute in this case? A. Yes, sir.

Q. Did you show him those checks? A. I did.

Q. Did you show him all of them? A. I did.

Q. Do you recollect how soon after the date of that letter, March 4, 1910, this happened?

A. No, I do not.

Q. Would you say it was shortly afterward?

Mr. McCORD.—I object to that as leading.

The COURT.—Overruled.

A. It was at the time that Mr. Todd was in Washington during the Ballinger-Pinchot controversy; I don't know the date of it except in that way.

Mr. McCORD.—That was in June, wasn't it?

The WITNESS.—I don't recall the date.

Mr. McCORD.—I saw Mr. Todd in Washington, that is how I happen to know.

Q. Did Mr. Brownell or anybody else for the bank at that time or any other time make any demand upon you for the possession of the checks? [102]

A. He did not.

Q. He made an examination of all of them?

A. As many as he wished.

Q. You offered him to inspect all of them?

A. I did.

(Testimony of C. W. McKercher.)

Cross-examination.

(By Mr. McCORD.)

Q. That was some several months after March 4th?

A. Yes, sir.

(Witness excused.)

Mr. McCORD.—I now renew my motion for a non-suit on the same ground, your Honor.

The COURT.—The motion is granted.

Mr. FISHBURNE.—The Court will allow us an exception.

The COURT.—Exception allowed. The Clerk will enter an order granting a nonsuit. The jurors are all excused from attendance until to-morrow morning at ten o'clock.

[Plaintiff's Exhibit "H"—Indictment.]

*In the United States Circuit Court for the Western
District of Washington, Western Division.*

No. 1933.

The United States of America,
Western District of Washington,—ss.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

M. P. McCOY,

Defendant.

INDICTMENT.

Violation of Sec. 5488, R. S.

July Term, A. D. 1909.

The Grand Jurors of the United States of America,
duly impaneled, sworn and charged to inquire within

and for the Western District of Washington, upon their oaths present: [103]

That one M. P. McCoy, heretofore, to wit: On the 31st day of March, 1909, and at various times between that date and the first day of September, 1909, in the City of Seattle, in said District, being then and there an examiner of surveys employed by the General Land Office of the United States, and as such officer being at said times and place a disbursing officer of the United States and entrusted with certain public moneys of the United States; did, by virtue of his said office and employment and while so employed and acting as such disbursing officer of the United States, receive and take into his possession certain public moneys of the United States, to wit: the sum of Five Thousand Seven Hundred and Eighteen (\$5,718.00) Dollars, lawful money of the United States of America, then and there the property of the United States, a more particular description of which money is to the Grand Jurors unknown; and the said M. P. McCoy did then and there wilfully, unlawfully and feloniously embezzle and convert to his own use said public moneys of the United States, to wit, the sum of Five Thousand Seven Hundred and Eighteen (\$5,718.00) Dollars, lawful money of the United States, a more particular description of which money so embezzled as aforesaid, being to the Grand Jurors unknown; contrary to the form of the statute in such case made and provided, and against

120 *The National Bank of Commerce vs.*

the peace and dignity of the United States of America.

ELMER E. TODD,
United States Attorney.

Witnesses examined before Grand Jurors: Elmer E. Todd.

[Indorsed]: Indictment for Violation Sec. 5488, R. S. Case No. 1933. Plaintiff's Exhibit "H." United States District Court, Western Dist. of Washington. Filed March 13, 1912. A. W. Engle, Clerk. [104]

[Plaintiff's Exhibit "J"—Letters.]

4-207-r.

ETDB

DEPARTMENT OF THE INTERIOR
WTP GENERAL LAND OFFICE,
WASHINGTON.

February 28, 1912.

I hereby certify that the annexed copies of letters from this office addressed to M. P. McCoy, Examiner, are true and literal exemplifications of the official record of said letters in this office.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, on the day and year above written.

[Seal of United States General Land Office.]

H. W. SANFORD,
Recorder of the General Land Office.

Plaintiff's Exhibit "J" offered but not admitted in evidence.

In Reply Please Refer to

"E"

4''WB

172408

1907

DEPARTMENT OF THE INTERIOR. C L D B
GENERAL LAND OFFICE.

Washington, D. C., October 15, 1907.

Address only the

Commissioner of the General Land Office.

SCHEDULE OF COLVILLE ALLOTMENTS.

Mr. M. P. McCoy,

Examiner,

Seattle, Washington.

Sir:

Your letter of October 3, 1907, is received, reporting receipt of data from Olympia, and non-receipt of instructions, which [105] must have reached you soon after said date. I transmit herewith a copy of all the remaining parts of the Colville schedule of Indian allotments, which have not heretofore been supplied for your use in verifying and reporting their condition.

Of the 14 townships represented, six are still unsurveyed, and in those you are not required to investigate. Three tracts are in Tp. 39, R. 33, which you have already examined, but they were not found and reported by Deputy Shelton; so it is necessary to examine their status, and report as to the necessity of a correction survey. Allotment No. 278 for E. Du-

puis appears also omitted from the survey of section 34, Tp. 37, R. 33.

As you state you are not informed as to what townships have been suspended for segregation, you are now advised that a general suspending order was telegraphed to the Waterville and Spokane offices Sept. 20, 1906, affecting *all public lands* in the north or ceded part of the Colville Reserve, besides orders by letters specifying various townships.

Very respectfully,

FRED DENNETT,

Acting Commissioner.

JCP

In Reply Please Refer to

“E

WTP

208772-1907

DEPARTMENT OF THE INTERIOR. CLDB
GENERAL LAND OFFICE.

Washington, December 11, 1907.

Address only the
Commissioner of the General Land Office.

SCHEDULE OF INDIAN ALLOTMENTS.

Mr. M. P. McCoy,

Examiner of Surveys,
Seattle, Washington.

Sir:

I transmit herewith, as requested in your letter dated November 24, 1907, a copy of the schedule of Indian allotments in [106] T. 40 N., R. 32 E.,

Washington, transmitted with your letter dated June 2, 1907.

Very respectfully,

FRED DENNETT,

L.J.

Assistant Commissioner.

In Reply Please Refer to

E

WTP

211973-1907

DEPARTMENT OF THE INTERIOR. C L D B

GENERAL LAND OFFICE.

Washington, D. C., December 13, 1907.

Address only the

Commissioner of the General Land Office.

INSTRUCTIONS TO EXAMINER OF
SURVEYS.

Mr. M. P. McCoy,

Examiner of Surveys,

Seattle, Washington.

Sir:

Upon completion of the work in connection with the Indian allotments in the ceded portion of the Colville Indian Reservation, Washington, you are requested to prepare and transmit your detailed report of the examination of the survey of the standard lines in the diminished reservation, executed by Witham and Whitham, D. S., under their contract No. 635, examined by you last spring.

The returns of said survey have been pending in this office for some time and it is desired that action may be taken thereon at the earliest practicable date.

In connection with the work upon which you are now engaged, it is noted that a description of the allotments in the following unsurveyed townships has been furnished you:

Tps. 36 N., Rs. 29 and 30 E.

Tps. 35, 39 and 40 N., R. 31 E. [107]

T. 40 N., R. 35 E.

Tps. 35 N., Rs. 36 and 37 E.

Your present orders are not intended to cover any investigation of the allotments in these townships, as it will be the duty of the deputies who are to make the surveys therein to segregate said allotments from the public lands.

Very respectfully,

FRED DENNETT,

Assistant Commissioner.

L.J.

In Reply Please Refer to

E

WTP

208656-1907

DEPARTMENT OF THE INTERIOR. C L D B
GENERAL LAND OFFICE.

Washington, D. C., December 19, 1907.

Address only the

Commissioner of the General Land Office.

INSTRUCTIONS TO EXAMINER OF
SURVEYS.

Mr. M. P. McCoy,

Examiner of Surveys,

Seattle, Washington.

Sir.—

I transmit herewith for examination as to the *bona*

fides of the alleged settlers the applications for the survey of T. 39 N., R. 31 E. and T. 21 N., R. 9 E., Washington. The surveyor general has, by letter of even date herewith, been directed to transmit to you direct such other applications as may be received.

Very respectfully,

FRED DENNETT,

L.J. Assistant Commissioner. [108]

In Reply Please Refer to W.T.P.

E

WTP

218705—1907.

DEPARTMENT OF THE INTERIOR.

GENERAL LAND OFFICE.

Washington, D. C., December 26, 1907.

Address only the

Commissioner of the General Land Office.

INSTRUCTIONS TO EXAMINER OF
SURVEYS.

Mr. M. P. McCoy,

Examiner of Surveys,

Seattle, Washington.

Sir:

I transmit herewith for examination as to the *bona fides* of alleged settlers the applications for survey of T. 37 N., R. 40 E., Washington.

Very respectfully,

FRED DENNETT,

L.J. Assistant Commissioner.

In Reply Please Refer to

E

C.L.D.B.

DEPARTMENT OF THE INTERIOR.

W.T.P. GENERAL LAND OFFICE.

221864-1907.

Washington, D. C., January 7, 1908.

Address only the

Commissioner of the General Land Office.

INDIAN ALLOTMENTS. COLVILLE INDIAN
RESERVATION.

Mr. M. P. McCoy,

Examiner of Surveys,

Seattle, Washington.

Sir:

In reply to your letter dated December 18, 1907, relative to allotment No. 65, Agnes, in T. 40 N., R. 32 E., Washington, you [109] are advised that the proper description of said allotment is as follows: W. $\frac{1}{2}$ NW. $\frac{1}{4}$ NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ section 35 and NE. $\frac{1}{4}$ NW. $\frac{1}{4}$ NW. $\frac{1}{4}$ east of Kettle River in section 35 and SW. $\frac{1}{4}$ SW. $\frac{1}{4}$ east of Kettle River in section 26, W. $\frac{1}{2}$ SE. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$, section 26 and SW. $\frac{1}{4}$ NW. $\frac{1}{4}$ SW. $\frac{1}{4}$ east of Kettle River in section 26, said township. Any other description furnished you is incorrect.

The allotment No. 11 of Leo Tonasket has been properly shown upon a supplemental plat approved March 1, 1907, and it appears that no further action is necessary in connection therewith on the part of this office, the facts contained in your letter dated June 2, 1907, relative thereto having been submitted to the Indian office with my letter dated June 15,

1907, and no further action seems to have been taken.

Very respectfully,

FRED DENNETT,

L.J.

Assistant Commissioner.

In Reply Please Refer to

DEPARTMENT OF THE INTERIOR. C.L.D.B.

E GENERAL LAND OFFICE.

W.T.P.

198421-221863

Washington, D. C., January 9, 1908.

1907

Address only the

Commissioner of the General Land Office.

INSTRUCTIONS TO EXAMINER OF
SURVEYS.

Mr. M. P. McCoy,

Examiner of Surveys,

Seattle, Washington.

Sir:

In reply to your letter dated November 6, 1907, relative to the survey of allotment No. 33, Julia Chesaw, in section 21, T. 40 N., R. 30 E., you are directed to submit your field notes of [110] survey to the surveyor general for transcribing and platting if you have not already done so.

Your action in proceeding with the examination of such surveys as can be reached at this season of the year, as reported in your letter dated December 18, 1907, is approved.

Upon completion thereof, you will prepare and

128 *The National Bank of Commerce vs.*

submit your reports, after which you will proceed with the examination of *bona fides*.

Very respectfully,

FRED DENNETT,

L.J.

Assistant Commissioner.

In Reply Please Refer to
"E"

36199-1908

WTP

DEPARTMENT OF THE INTERIOR. CLDB
GENERAL LAND OFFICE.

Washington, D. C., March 6, 1908.

Address only the

Commissioner of the General Land Office.

INSTRUCTIONS TO EXAMINER OF
SURVEYS.

Mr. M. P. McCoy,

Examiner of Surveys,

Seattle, Washington.

Sir:

In reply to your letter dated February 16, 1908, requesting instructions as to further work, you are hereby directed, upon receipt hereof, to proceed to western Montana and examine the *bona fides* of settlers in the following townships, the applications for the survey of which are herewith transmitted under separate cover: [111]

Group No. 1.

Ts. 1 N., Rs. 21 and 22 W.

T. 2 N., R. 19 W.

Tps. 3 and 4 N., R. 21 W.

Tps. 1 S., Rs. 21 and 22 W.

Tps. 2 and 3 S., R. 22 W.

Group No. 2.

T. 26 N., R. 22 W.

T. 29 N., R. 18 W.

Tps. 31 N., Rs. 20 and 24 W.

Tps. 32 N., Rs. 20, 21, 22 and 28 W.

tps. 33 and 34 N., R. 27 W.

Group 3.

Tps. 25 N., Rs. 33 and 34 W.

A map of Montana and a supply of blanks for reports are herewith transmitted.

You will take with you your surveying outfit for use in case it should be deemed expedient to later assign to you the field examination of certain surveys in Montana.

Very respectfully,

FRED DENNETT,

J.R.A.

Commissioner.

In Reply Please Refer to

“E”WTP

48326 53824

54781 57436

59454

1908.

DEPARTMENT OF THE INTERIOR. CLDB
GENERAL LAND OFFICE.

Washington, D. C., March 31, 1908.

Address only the

Commissioner of the General Land Office.

INSTRUCTIONS TO EXAMINER OF
SURVEYS. [112]

Mr. M. P. McCoy,

Examiner of Surveys,

Missoula, Montana.

Sir:

In reply to your letter dated March 17, 1908, you are requested to return to the Surveyor General for Washington all data in your hands relating to surveys in his district and to advise him to hold the same for further investigation.

In addition to the work heretofore assigned you in Montana, you are directed to examine the *bona fides* of applicants for the survey of the following townships in Montana, the petitions therefor being herewith transmitted, viz.:

T. 37 N., R. 2 W., T. 28 E., R. 19 E., T. 37 N., R. 21 E., T. 29 N., R. 36 E., Ts. 30 N., Rs. 33 and 34 E., T. 25 N., R. 33 E., and T. 26 N., R. 42 E.

In connection therewith you are directed to obtain the necessary data and examine the survey executed by Fred I. Hubbard, D. S., under his contract No. 510, and, if data is obtained from the surveyor General, that by Parkinson and Douglas, D. S., under their contract No. 517.

Very respectfully,

FRED DENNETT,

Commissioner.

J.R.A.

In Reply Please Refer to

E C.L.D.B.

DEPARTMENT OF THE INTERIOR.

DB. GENERAL LAND OFFICE.

Washington, D. C., April 14, 1908.

Address only the

Commissioner of the General Land Office.

Mr. M. P. McCoy,

Examiner of Surveys,

Helena, Montana.

Sir:

I have your letter of the 8th instant in which you ask to be allowed to continue examinations in the State of Washington, [113] as your wife cannot live in the high altitudes of Montana where you are at present assigned. You fear that your work has not been satisfactory to this office.

In reply you are informed that your services in the State of Washington have been very acceptable and no fault is found with the character of your work.

Your assignment to Montana was owing solely to the necessities of the service, and in the interest of good administration.

No instructions were given you as to a permanent assignment to Montana, but directions were forwarded indicating that your stay in the latter State would probably extend over the coming surveying season.

I regret that I cannot immediately comply with your personal request to return to Washington to continue examinations there as the exigencies of the work may require a longer detention in Montana.

I will, however, endeavor to have your examinations confined, as far as practicable, to the lower altitudes in eastern Montana, which I hope will enable you to prosecute the work with your usual fidelity.

Very respectfully,

L.J.

FRED DENNETT,
Commissioner.

In Reply Please Refer to

“E”

WTP

83637)

83658) 1908

83659)

DEPARTMENT OF THE INTERIOR. W T P
GENERAL LAND OFFICE.

Washington, D. C., May 5, 1909.

Address only the

Commissioner of the General Land Office.

PROCEDURE IN EXAMINATION OF
SURVEYS. [114]

Mr. M. J. McCoy,

Examiner of Surveys,

Great Falls, Montana.

Sir:

In reply to your letter dated April 17, 1908, you are hereby authorized to transport your two permanent assistants from the State of Washington to the District of Montana, where you are now engaged in the examination of surveys.

With reference to your proposed examination of surveys executed in northeastern Montana, payable

from special deposits by the Northern Pacific Railway Co., you are advised that this office has, by letter of even date herewith, requested the Secretary of the Interior for general authority to authorize examiners of surveys to employ transitmen to organize auxiliary parties and examine surveys under the personal supervision of the examiners and upon the granting of such authority, you will be further advised.

Very respectfully,

FRED DENNETT,

Commissioner.

JCB

In Reply Refer to

“E”

C.L.D.B

DEPARTMENT OF THE INTERIOR.

W.T.P. GENERAL LAND OFFICE.

83637)

88700) 1908

Washington, D. C., June 18, 1908.

Address only the

Commissioner of the General Land Office.

INSTRUCTIONS TO EXAMINER OF
SURVEYS.

Mr. M. P. McCoy,

Examiner of Surveys,

Great Falls, Montana.

Sir:

You are advised that under departmental authority dated May 5, 1908, examiners are authorized to employ a competent [115] assistant as transitman in charge of an auxiliary party under the supervision of the examiner to assist in the examination

of surveys, at a salary of \$100 per month and actual necessary expenses of transportation and subsistence. In accordance with your recommendation dated April 21, 1908, you are hereby authorized to employ John D. King as transitman to assist you in the examination of the surveys assigned to you in north-eastern Montana, and as outlined in your said letter. A solar transit, tripod, chain, tape and set of pins has been sent to you at Culbertson, Montana, the receipt for the two boxes sent by express being herewith transmitted. The report of work done by the transitman should be included in your weekly report.

Very respectfully,

H. H. SCHWARTZ,

JCP

Acting Assistant Commissioner.

In Reply Please Refer to

DEPARTMENT OF THE INTERIOR. C.L.D.B.

E. GENERAL LAND OFFICE.

W.T.P.

151779-1908.

Washington, D. C., August 22, 1908.

Address only the

Commissioner of the General Land Office

INSTRUCTIONS TO EXAMINER OF SUR-
VEYS.

Mr. M. P. McCoy,

Examiner of Surveys,

Great Falls, Montana.

Sir:

In reply to your letter dated August 12, 1908, relative to the examination of surveys in Montana,

you are advised that the Surveyor General has been directed to transmit to you at the earliest practicable date the data for the examination of contracts No. 515, A. E. Cumming, D. S., Nos. 530 and 531, Fessenden and Ross, D. D., and No. 542, R. C. Durnford, D. S. [116]

The survey under contract No. 505 within the Fort Peck Indian Reservation is being examined by A. F. Dunnington, Topographer in Charge of the surveys within said reservation.

Weather and flood conditions in the southeastern part of the district early in the season rendered it expedient for examiner Wilkes to take up some of the work which it was thought would be examined by you later, but it is believed that there will be enough completed work in the northeastern part of the state to keep you steadily at work.

The Surveyor General reports the probable early completion of the contracts Nos. 518 and 519, George H. Potter, D. S. and Nos. 526 and 527, Williams and Hertz, D. S.

You will include also the examination of T. 9 N., R. 33 E., Harley J. Riley, D. S., under contract No. 500, Tps. 2 and 3 N., R. 28 E., Page and Page, D. S., contract No. 513 and T. 7 S. R. 24 E., contract No. 512, George L. Elmer, D. S., the same being isolated townships not yet examined.

Mr. Wilkes, whose address is Miles City, Montana, has been directed to confine his operations to the district south of the Yellowstone and east of the Big Horn Rivers and to send to you at Great Falls any

data in his hands for the isolated work above referred to.

Very respectfully,

FRED DENNETT,

ALP.

Commissioner.

In Reply Please Refer to.

“E”

W.T.P.

W.T.P.

C.L.D.B.

DEPARTMENT OF THE INTERIOR.

189338-1908 GENERAL LAND OFFICE.

Washington, D. C., November 25, 1908.

Address only the

Commissioner of the General Land Office

INSTRUCTIONS TO EXAMINER OF SUR-
VEYS. [117]

Mr. M. P. McCoy,

Examiner of Surveys,

Great Falls, Montana.

Sir:

In reply to your letter dated November 8, 1908, you are directed, upon the advent of unfavorable weather conditions for the prosecution of field work, to return to Seattle, Washington, and submit your reports.

You are requested to inform the Surveyor General of Montana, upon completion of your field examination of each survey, whether you will recom-

mend the acceptance thereof, or, if corrections are required, to what extent.

Very respectfully,

FRED DENNETT,

JCP.

Commissioner.

OFFICE AUDITOR INTERIOR DEPT.

Feb 28 1912

A.M.9

12

2

4 P.M.

March 4, 1910.

The National Bank of Commerce,
Seattle, Washington.

Gentlemen:

On behalf of the United States of America, I hereby make demand upon you for repayment of the sum of \$15,129.81, on account of checks which were issued by M. P. McCoy, examiner of surveys and special disbursing agent for the Department of the Interior during the years 1907, 1908 and 1909, which checks were paid by you upon forged endorsements, the endorsement of payee in each instance being a forgery.

Attached hereto is the list of said checks with the date of each, the name of the payee, the amount of each check, and the bank or banks through which it was passed before being paid by the National Bank of Commerce. [118]

All these checks are in my office at the Federal Building and your officers and attorneys will be allowed to inspect them if you so desire.

Respectfully,

ELMER E. TODD,

Encl.

United States Attorney.

RETURN OF SERVICE.

The United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the annexed letter on the therein named bank by delivering the original thereof to R. R. Spencer, its 1st vice-president, personally, at the place of business of said bank at Seattle in said District on the 5th day of March, A. D. 1910.

C. B. HOPKINS,
United States Marshal.
By M. T. McGraw,
Deputy. [119]

[Exhibit "K"—Checks.]

No.	Date.	Payee.	Amount.	Bank or Bank through which check passed.
1	Oct. 14, 1907	Albert Peterson	\$20.00	Columbia Valley Bank
2	" 14, "	Nels Anderson	20.00	"
3	" 14, "	Wm. Jager	60.00	"
4	" 14, "	H. Berggren	47.50	"
5	" 31, "	F. L. Day	28.00	"
6	" 31, "	G. Hoge	28.00	"
7	" 31, "	Frank Engberg	96.00	"
8	" 31, "	Chas. Lund	78.75	"
9	" 31, "	J. D. King	62.00	"
10	" 31, "	F. M. Clark	62.00	"
12	Nov. 30, "	F. L. Day	52.50	"
13	" 30, "	G. Hoge	52.50	"
14	" 30, "	Frank Engberg	180.00	"
15	" 30, "	Chas. Lund	150.00	"
16	" 30, "	J. D. King	60.00	"
17	" 30, "	F. M. Clark	60.00	"
19	Dec. 31, "	F. L. Day	54.25	"
20	" 31, "	G. Hoge	54.25	"
21	" 31, "	Frank Engberg	186.00	"
22	" 31, "	Chas. Lund	155.00	"

No.	Date.	Payee.	Amount.	Bank or Bank through which check passed.
23	Dec. 31, 1907	F. M. Clark	\$62.00	Columbia Valley Bank
24	" 31, "	J. D. King	62.00	"
26	Jan. 10, 1908	F. L. Day	17.50	"
27	" 10, "	G. Hoge	17.50	"
28	" 10, "	Frank Engberg	60.00	"
22	" 31, "	Chas. Lund	50.00	"
30	" 13, "	J. D. King	26.00	"
31	" 13, "	F. M. Clark	26.00	Seattle Natl. Bank
43	May 6, "	John Jabelson	27.50	First Natl. Bank of Havre, Mont.
44	" 6, "	John S. Cole	36.00	"
45	" 31, "	J. D. King	62.00	"
46	" 31, "	F. M. Clark	62.00	"
47	" 31, "	A. J. Whitney	54.25	"
48	" 31, "	H. M. Benson	125.00	"
49	" 31, "	C. A. Thrapp	150.00	"
50	June 10, "	H. M. Benson	48.75	"
51	" 10, "	C. A. Thrapp	72.00	"
52	" 23, "	J. E. Scherer	78.00	First Natl. Bank Glasgow,
53	" 23, "	H. M. Benson	63.75	Mont., & Seattle Natl. Bank
54	" 30, "	J. D. King	69.33	" [121]

No.	Date.	Payee.	Amount.	Bank or Bank through which check passed.
55	June 30, 1908	F. M. Clark	\$60.00	First Natl. Bank Glasgow,
56	" 30,	A. J. Whitney	54.25	Mont., & Seattle Natl. Bank
57	" 30,	H. A. Moore	63.00	"
58	" 30,	D. H. Sullivan	12.25	"
59	" 30,	Geo. D. Cook	14.00	"
60	" 30,	F. W. McCulley	14.00	"
61	" 30,	S. F. Cady	12.25	"
62	" 30,	H. M. Benson	54.00	"
2	July 31,	J. D. King	100.00	Seattle Natl. Bank
3	" 31,	F. M. Clark	62.00	"
4	" 31,	Geo. D. Cook	62.00	First Natl. Bank Glasgow,
5	" 31,	F. M. McCulley	62.00	Mont. & Seattle Natl.
6	" 31,	A. J. Whitney	62.00	Bank
7	" 31,	H. A. Moore	279.00	"
8	" 31,	D. H. Sullivan	54.25	"
9	" 31,	S. F. Cady	54.25	"
10	" 31,	H. M. Benson	248.00	"
12	Aug. 31,	J. D. King	100.00	Seattle Natl. Bank
13	" 31,	F. M. Clark	62.00	"
14	" 31,	Geo. D. Cook	62.00	First Natl. Bank Glasgow, and Seattle Natl. Bank

No.	Date.	Payee.	Amount.	Bank or Bank through which check passed.
15	Aug. 31, 1908	F. W. McCulley	\$62.00	Seattle Natl. Bank
16	" 31,	A. J. Whitney	62.00	First Natl. Bank Glasgow, Mont., & Seattle Natl.
17	" 31,	H. A. Moore	279.00	"
18	" 31,	D. H. Sullivan	54.25	"
19	" 31,	S. F. Cady	54.25	"
20	" 31,	H. M. Benson	248.00	"
22—A	Sept. 8,	A. Fetters	7.85	Seattle National Bank
22—B	" 30,	J. D. King	100.00	"
23	" 30,	F. M. Clark	60.00	"
24	" 30,	Geo. D. Cook	60.00	"
25	" 30,	F. W. McCulley	60.00	"
26	" 30,	A. J. Whitney	60.00	"
27	" 30,	H. A. Moore	270.00	"
28	" 30,	D. H. Sullivan	52.50	"
29	" 30,	S. F. Cady	52.50	"
30	" 30,	H. M. Benson	240.00	"
1	Oct. 31,	J. D. King	100.00	"
2	" 31,	F. M. Clark	62.00	"
3	" 31,	H. A. Moore	279.00	"
4	" 31,	Geo. D. Cook	62.00	"

No.	Date.	Payee.	Amount.	Bank or Bank through which check passed.
5	Oct. 31, 1908	F. W. McCulley	\$62.00	Seattle National Bank
6	" 31, "	A. J. Whitney	62.00	"
7	" 31, "	H. M. Benson	248.00	"
8	" 31, "	(Blank)	54.25	"
9	" 31, "	S. F. Cady	54.25	"
11	Nov. 30, "	J. D. King	100.00	National Bank of Montana,
12	" 30, "	F. M. Clark	60.00	Helena
13	" 30, "	Geo. D. Cook	60.00	"
14	" 30, "	F. W. McCulley	60.00	"
15	" 30, "	A. J. Whitney	60.00	"
16	" 30, "	H. A. Moore	270.00	"
17	" 30, "	D. H. Sullivan	52.50	"
18	" 30, "	S. F. Cady	52.50	"
19	" 30, "	H. M. Benson	240.00	"
21	Dec. 31, "	J. D. King	100.00	Seattle National Bank
22	" 31, "	F. M. Clark	62.00	"
23	" 31, "	Geo. D. Cook	62.00	"
24	" 31, "	F. W. McCulley	62.00	"
25	" 31, "	A. J. Whitney	62.00	"
26	" 31, "	D. H. Sullivan	54.25	"

No.	Date.	Payee.	Amount.	Bank or Bank through which check passed.
27	Dec. 31, 1908	S. F. Cady	\$54.25	Seattle National Bank
28	" 31, "	T. E. Lynch	24.50	"
29	" 31, "	Claude J. Perret	24.50	"
30	" 31, "	H. M. Benson	276.00	"
31	" 31, "	H. A. Moore	279.00	"
1	Jan. 5, 1909	J. D. King	12.90	"
2	" 5, "	F. M. Clark	8.00	"
3	" 8, "	Geo. D. Cook	16.00	"
4	" 8, "	F. W. McCulley	16.00	"
5	" 8, "	A. J. Whitney	16.00	"
6	" 8, "	D. H. Sullivan	14.00	"
7	" 8, "	S. F. Cady	14.00	"
8	" 8, "	H. M. Benson	48.00	"
9	" 8, "	H. A. Moore	72.00	"
14	Mar. 31, "	J. D. King	35.48	"
15	" 31, "	F. M. Clark	22.00	"
16	" 31, "	Geo. D. Cook	18.00	"
17	" 31, "	F. W. McCulley	18.00	"
18	" 31, "	A. J. Whitney	18.00	"
19	" 31, "	Joe Mikel	14.00	"

No.	Date.	Payee.	Amount.	Bank or Bank through which check passed. Seattle National Bank
20	Mar. 31, 1909	E. M. Bassett	\$14.00	"
21	" 31,	Geo. K. Cooper	14.00	"
22	" 31,	Chas. Paine	14.00	"
23	" 31,	H. M. Benson	82.50	"
24	" 31,	A. C. Junkin	72.00	"
1	Apr. 30,	J. D. King	100.00	"
2	" 30,	F. M. Clark	60.00	"
3	" 30,	Geo. D. Cook	60.00	"
4	" 30,	F. W. McCulley	60.00	"
5	" 30,	A. J. Whitney	60.00	"
6	" 30,	Joe Mikel	52.50	"
7	" 30,	E. M. Bassett	52.50	"
8	" 30,	Geo. K. Cooper	52.50	"
9	" 30,	Chas. Paine	52.50	"
10	" 30,	A. C. Junkin	270.00	"
11	" 30,	H. M. Benson	300.00	"
13	May 31,	J. D. King	100.00	"
14	" 31,	F. M. Clark	62.00	"
15	" 31,	Geo. D. Cook	62.00	"
16	" 31,	F. W. McCulley	62.00	"
17	" 31,	A. J. Whitney	62.00	"

No.	Date.	Payee.	Amount.	Bank or Bank through which check passed. Seattle National Bank
18	May 31, 1909	Joe Mikel	\$54.25	"
19	" 31,	E. M. Bassett	54.25	"
20	" 31,	Geo. K. Cooper	54.25	"
21	" 31,	Chas. Paine	54.25	"
22	" 31,	A. C. Junkin	279.00	"
23	" 31,	H. M. Benson	310.00	"
25	June 30,	J. D. King	100.00	"
26	" 30,	F. M. Clark	60.00	"
27	" 30,	Geo. D. Cook	60.00	"
28	" 30,	F. W. McCulley	60.00	"
29	" 30,	A. J. Whitney	60.00	"
30	" 30,	Joe Mikel	52.50	"
31	" 30,	E. M. Bassett	52.50	"
32	" 30,	Geo. K. Cooper	52.50	"
33	" 30,	Chas. Paine	52.50	"
34	" 30,	H. M. Benson	300.00	"
35	" 30,	A. C. Junkin	270.00	"
1	July 31,	J. D. King	100.00	"
2	" 31,	F. M. Clark	62.00	"
3	" 31,	Geo. D. Cook	62.00	"
4	" 31,	F. W. McCulley	62.00	"

No.	Date.	Payee.	Amount.	Bank or Bank through which check passed.
5	July 31, 1909	A. J. Whitney	\$62.00	Seattle National Bank
6	" 31,	Joe Mikel	54.25	"
7	" 31,	E. M. Bassett	54.25	"
8	" 31,	Geo. K. Cooper	54.25	"
9	" 31,	Chas. Paine	54.25	"
10	" 31,	A. C. Junkin	279.00	"
11	" 31,	H. M. Benson	310.00	"
13	Aug. 31,	J. D. King	100.00	"
14	" 31,	F. M. Clark	62.00	"
15	" 31,	Geo. D. Cook	62.00	"
16	" 31,	F. W. McCulley	62.00	"
17	" 31,	A. J. Whitney	62.00	"
18	" 31,	Joe Mikel	54.25	"
19	" 31,	E. M. Bassett	54.25	"
20	" 31,	Geo. K. Cooper	54.25	"
21	" 31,	Chas. Paine	54.25	"
22	" 31,	A. C. Junkin	279.00	"
23	" 31,	H. M. Benson	310.00	"
[Indorsed]: Ex. "K." 1933. Filed U. S. District Court, Western District of Washington. Mar. 13, 1912. A. W. Engle, Clerk. By S., Deputy. [128]				

Thereupon, defendant National Bank of Commerce offered the following testimony in its behalf, to wit:

[Testimony of R. S. Walker, for Defendant.]

R. S. WALKER, sworn as a witness for defendant, testified as follows:

Direct Examination.

(By Mr. McCORD.)

Q. What is your name? A. R. S. Walker.

Q. What is your position?

A. Assistant Cashier of the National Bank of Commerce.

Q. How long have you occupied that position?

A. Since 1904.

Q. You are familiar with the account carried in that bank by M. P. McCoy, Special Disbursing Agent and Examiner of Surveys of the United States? A. Yes.

Q. Do you remember when it was opened?

Mr. FISHBURNE.—Pardon me, one matter more, before you proceed I desire the record to show—I just thought about it—that we have failed to put in any denial to your amended answer.

Mr. McCORD.—It may be considered denied.

Stipulated and agreed between counsel that the amended answer of the defendant is denied by the Government.

Q. Do you remember when it was opened?

A. My recollection is it was in October, 1903.

Q. What was the course of dealing with that account in regard to balancing the books with McCoy,

(Testimony of R. S. Walker.)
on the Government account?

A. Well, we rendered a statement at the end of each month.

Q. To whom?

A. We rendered a statement, made a statement in duplicate, and the original of the statement was sent to the disbursing officer, and the duplicate sent to the Secretary of the Treasury at Washington.

Q. That was done monthly?

A. Yes; at the end of every month. [129]

Q. What became of the checks returned to and paid by the bank?

A. The checks were sent with and attached to the duplicate statement.

Q. I will ask you if you have caused to be made up statement showing the statements sent by the bank from time to time to the Treasury Department; and also of statements sent to McCoy from time to time by the bank? A. Yes.

Q. Are these the statements? A. Yes.

Mr. McCORD.—Mark these as Defendant's Exhibit No. 1 for identification.

Q. I will ask you to examine this Defendant's Identification No. 1, and I will ask you if that is a copy of the statement you have just referred to which were made from time to time by the bank and sent to the Treasury Department and Mr. McCoy?

A. Yes, it is.

Mr. McCORD.—I offer in evidence Defendant's Exhibit No. 1.

Mr. FISHBURNE.—Objected to on the ground

(Testimony of R. S. Walker.)

that it is incompetent, irrelevant and immaterial to any issues in this case.

(Argument.)

The COURT.—Objection sustained at this time, and you may be allowed an exception.

Mr. McCORD.—Will your Honor indicate on what ground it is sustained?

The COURT.—Why, the making of a monthly statement out would not be a defence, and would not be a ratification under the law. If there was any testimony showing that after they had knowledge that this act was done it was ratified, then this would tend to reinforce the other testimony.

Mr. McCORD.—That goes to the merits of the objection; I thought there might be some technical reason.

The COURT.—No; it goes to the fact that there was no ratification of the McCoy monthly statement; no further act [130] of the representatives of the Government after knowledge of the fact which would be a ratification; therefore, I do not think it is competent.

Mr. McCORD.—I offer it in evidence in order to show that the Government duly received these statements; not for the purpose of showing that it would be bound necessarily by them, but that they received these; and it is one element in the chain of ratification; that is offered, your Honor, in view of the exhibits introduced by the Government which show that Mr. Dennett, the Commissioner of the General Land Office, who had control of these entire proceedings,

(Testimony of R. S. Walker.)

has by his own signature, examined and verified the vouchers, and verified the returns, and has over his own signature certified that they were correct. I offer them further in view of the fact that the evidence that has been introduced shows that the officers of the Government of the United States had full knowledge of all of the facts, and ratified and approved these statements of this account, and recognized that McCoy owes the United States the money and recognized that it was the indebtedness of McCoy to the United States of United States money and property which was appropriated. This evidence is an element in line with that defense.

The COURT.—You may reoffer this after you have produced some further testimony to show knowledge on the part of the Government.

Mr. McCORD.—I think the evidence is in here now upon which it is based.

The COURT.—Then the objection is sustained.

Mr. McCORD.—I want to call the Court's attention particularly to it. The testimony to which I refer is the testimony shown in this indictment where the United States in 1909, September, 1909, acting under the direction of the Department of Justice, one of the departments of the Government of the [131] United States, entered into and directed the prosecution of M. P. McCoy, whereby he was indicted, and in that indictment it was specifically charged that Mr. McCoy had embezzled \$5,718.00 of the money of the United States then and there being the property of the United States. Now, then,

(Testimony of R. S. Walker.)

I take it under the authorities, and particularly under the authority of the case of *U. S. v. Walker*, 139 U. S. —, that we are entitled to show estoppel on the part of the United States because one of the great departments of this Government in this particular instance has charged that this money they are now suing for in this action was the money of the United States and not the money of defendant National Bank of Commerce. Not only that, but they have prosecuted Mr. McCoy, and convicted him, and he was sentenced to the penitentiary, and he served out his term; all of which goes to show that the Government of the United States through its officers sworn and then proved and acted upon the assumption throughout that the money that was stolen by McCoy was not the money of the National Bank of Commerce, but was the money and property of the Government of the United States. If that is true, *the* when McCoy was indicted and prosecuted, he was prosecuted wrongfully and in disregard of his rights when he was punished and served out his sentence upon the theory that at least \$5,718 of this money was the money and property of the United States which he embezzled. How can it be said now, your Honor, that the United States in 1909, after all of the facts had been brought out that it solemnly acting under the jurisdiction of the Department of Justice under the direction of the Attorney General of the United States indicted this man for stealing the money of the United States, this particular money and convicted him of so doing; and now be heard to

(Testimony of R. S. Walker.)

say it was not the money of the United States, but of the defendant. I think that the United States cannot be put in the attitude [132] of saying in one breath it is our money and we will convict and punish you for stealing it; and then turn immediately around afterwards and bring a civil action for the recovery of the money and say it is not our money. I say that when one Department of this Government acting through its officers authorized to bind it shows that state of facts that becomes a verity and that the Government cannot be heard to subsequently change its position and deny the fact.

The COURT.—The question occurs to me, this money might be the money of the United States and the United States still hold McCoy for embezzling it, and the defendant still be liable to account for the money. The money was the Government funds and were placed in the depositary with the restriction that certain duties devolved upon McCoy relative to its disbursement; and I think that under the holding of the Court of Appeals, that the defendant is responsible for the improper disbursement of the money. Objection will have to be sustained to the admission in evidence of that testimony.

Statements refused admission in evidence.

Mr. McCORD.—Exception. That is all, Mr. Walker.

Mr. FISHBURNE.—That is all; we have no cross-examination.

Mr. McCORD.—That is all; I rest my case.

Mr. FISHBURNE.—The Government rests. I

have no further testimony, and I desire to have the jury dismissed and I wish to make a motion and argue it to the Court, which I don't desire to state in the presence of the jury.

(Jury excused.)

Mr. McCORD.—I want an exception to your Honor's rulings.

The COURT.—Let the record show they are allowed.

Mr. FISHBURNE.—We move at this time that the Court instruct the jury to bring in a verdict for the plaintiff for the amount prayed for in the complaint on the ground:

That plaintiff has proved by the evidence a case according [133] to the decision of the Circuit Court of Appeals here, and that the defendant has failed to put in any testimony negating the plaintiff's case, and on the pleadings and all of the records of the case.

(Argument of counsel.)

The COURT.—Motion granted.

Mr. McCORD.—Exception.

(Exception allowed by the Court.)

(Jury recalled.)

The COURT.—Gentlemen of the jury: I will instruct you to return a verdict for the plaintiff in the sum of \$15,129.81 together with interest from the 5th day of March, 1910; and I will appoint Mr. McCoy your foreman to sign the verdict.

Mr. McCORD.—I don't know whether this is the proper time to except to your instruction, and to your

Honor's action in directing an instructed verdict in this case.

The COURT.—Yes, note an exception.

(Verdict signed by the foreman as directed, and read by order of Court.)

The COURT.—You may file the verdict, Mr. Clerk.

(Verdict filed by the clerk as directed by the Court.)

Mr. McCORD.—I object to the filing of the verdict for the reason that the verdict is not supported by the evidence, and is contrary to the evidence; and particularly in addition to the general objections to the jury signing the verdict and the filing of the instructed verdict I object to the computation of interest from March 5, 1910, especially contending that they are not entitled to interest until the commencement of suit, under the laws of this State and suit not being commenced until December 10, 1910.

The COURT.—Note the exception. You will be excused from further consideration of this case, gentlemen of the jury.

(Jury discharged.) [134]

Mr. McCORD.—I would like also to have an exception to the refusal of the Court to give the instructions requested by the defendant, numbered one to eight, inclusive, and I want a separate exception to each one of them.

The COURT.—You want them filed.

Mr. McCORD.—Yes, I want them filed.

The COURT.—Note in the record they are filed with the clerk.

Mr. McCORD.—And let the record show an ex-

ception. I don't just remember the regular time for preparing and serving a bill of exceptions, I think it is only ten days, and I want to have that extended. I want the time extended thirty days in addition to the time provided by the rules and statutes.

Mr. FISHBURNE.—No objection to that.

The COURT.—Prepare a formal order and present it and I will sign it and have it put in the record.

Trial closed. [135]

*United States District Court, Western District of
Washington, Northern Division.*

No. 1933-C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE NATIONAL BANK OF COMMERCE, a Corporation,

Defendant.

Instructions Requested by Defendant.

STATEMENT.

Plaintiff brings this action to recover from the defendant the sum of \$15,129.81, the amount of money the plaintiff claims the defendant paid out upon checks drawn by M. P. McCoy, Examiner of Surveys and Special Disbursing Agent of the United States and made payable by McCoy to fictitious persons, the United States having deposited a large sum of money to the credit of McCoy as such Special

Disbursing Agent in the defendant bank; that such checks were drawn by McCoy fraudulently and not for the purpose of paying the legitimate obligations of the United States.

The complaint further alleges that the checks so paid were charged to the account of the United States by the defendant bank and that credit was given to the defendant bank by the United States in settlement with the bank without knowledge on the part of the plaintiff that the said McCoy had wrongfully issued the checks in question for the purpose of defrauding the United States, and that the fraud of the said McCoy was not discovered until about the 30th of September, 1909; that the plaintiff notified the defendant of the discovery of the forgeries and on [136] March 5th, 1910, demanded from the defendant payment of the sum in controversy, which plaintiff claims had been credited to the defendant by mistake on account of the forged endorsements.

Plaintiff further contends that the defendant has refused to pay the amount sued for and that the whole sum is now due and unpaid.

The defendant admits that McCoy was Examiner of Surveys and Special Disbursing Agent for the Interior Department of the United States; admits that during the years 1907, 1908 and 1909 the plaintiff deposited with the defendant a large sum of money to the credit of McCoy; admits that certain checks drawn by McCoy against said deposit made by the plaintiff to the defendant were paid by the defendant and that the respective amounts thereof were charged against the deposit of the plaintiff; ad-

mits that it has refused to pay the plaintiff the sum sued for or any part thereof; and denies all of the other allegations of the complaint.

The defendant further sets up two affirmative defenses; First: that the deposits made by the United States with the defendant to the credit of said McCoy as Examiner of Surveys and Special Disbursing Agent, were made in the usual and customary manner, as deposits are usually, ordinarily and customarily made by any individual depositor and that the relation of debtor and creditor was created between the plaintiff and the defendant by reason of such deposits, and that it became the duty of the defendant to pay the checks drawn by McCoy against said deposits and that all checks drawn by McCoy against the deposits of the plaintiff were paid from time to time as the same were presented for payment. That it was not the duty of the defendant to inquire as to the names of the payees of such checks; that all checks paid by the defendant as set forth in the complaint were [137] duly and regularly signed with the genuine signature of said McCoy as Examiner of Surveys and Special Disbursing Agent; that monthly statements were rendered to the plaintiff and to the said McCoy showing the amount of each check drawn by said McCoy against the said deposits and the aggregate of such checks, and that monthly statements were duly and regularly rendered in conformity with the usual custom of bankers. That no complaint of any kind was made by the plaintiff to the defendant as to the improper payment of these checks by reason of any forgeries, fictitious payees,

or otherwise, until the 5th of March, 1910. That it was the duty of the plaintiff upon the return of the vouchers of the said McCoy and upon the rendition of the statements of his account to the United States to have examined the said account and to have promptly notified the defendant of the alleged forgeries and fraud if any there were. That the failure on the part of the plaintiff to promptly notify the defendant of the alleged forgeries and fraud, if any there were, resulted in damage and injury to the defendant in a sum in excess of the amount sued for by the plaintiff in this action, and that the defendant was damaged by such negligence on the part of the plaintiff in failing to notify the defendant of the alleged forgeries promptly, and that by reason of the failure of the plaintiff to promptly notify the defendant of the fraud of the said McCoy, the defendant was prohibited from asserting any claim it may have had against the various banks that forwarded the checks in question to the defendant for payment, and that by reason of plaintiff's failure to so notify the defendant of such fraud on the part of the said McCoy within a reasonable time after said checks were paid and a statement of the account of the said McCoy, together with the vouchers was sent by the defendant to the plaintiff the said plaintiff [138] is barred and estopped of any right it may have had, if any, to maintain this action for the recovery of the money prayed for in the complaint.

Second: The defendant alleges that the plaintiff received the proceeds of the fraudulent checks and that the said McCoy expended the money collected

by him indirectly upon these checks in payment of the legitimate obligations of the Government, created by McCoy, and which he was authorized by law to create; that the plaintiff has not been damaged by the acts of the said McCoy by reason of the fact the Government received the benefit of the funds claimed to have been stolen by the said McCoy.

The plaintiff denies the affirmative allegations of the defendant's answer.

I.

If you find from the evidence in this case that at the time the account between M. P. McCoy and the defendant was opened by the plaintiff no special instructions were given by the plaintiff to the defendant limiting the right of McCoy to draw checks against the account so opened in his favor with the defendant bank, then I instruct you that the said McCoy, as Examiner of Surveys and Special Disbursing Agent had a legal right to draw checks against said account in the same way that an individual depositor of a bank might draw checks, and the said McCoy would have had the legal right to draw checks against said account in defendant's bank payable to bearer or to himself, and would have had the legal right to have drawn checks in his own favor, and it would have been the duty of the defendant bank to have paid the amount of such checks direct to the said McCoy, if he had demanded such payment. [139]

II.

A check is a bill of exchange drawn on a bank payable on demand, and a bill of exchange is payable

to bearer: (a) When it is so stated in the check. (b) When it is payable to the order of a fictitious or nonexisting person, and such fact was known to the person making it so payable. And if you find from the evidence in this case that the checks described in the complaint were made payable to fictitious persons and that McCoy at the time he drew such checks knew that the payees were fictitious persons, then I instruct you that the checks in question have the same legal force and effect as though the checks had been drawn specifically to bearer, and the fictitious payees must be regarded by you in relation to this matter as mere nonentities, and the checks are equivalent in law to instruments made payable to bearer; and if such checks were in legal effect made payable to bearer, then the defendant bank was under no legal duty or obligation to inquire into the genuineness or validity of the payees of the checks or the genuineness or validity of the endorsement of the names of such fictitious payees upon the back of the checks, and the defendant had the legal right to pay said checks upon presentation in the same way as though they had been made payable to bearer in each instance; and the defendant violated no duty that it owed to the plaintiff in paying said checks, and it was guilty of no negligence in so paying them, and is without fault, and the plaintiff is not entitled to recover in this action and your verdict must be for the defendant. [140]

III.

The plaintiff contends that the money it is suing

for was money paid under a mistake of fact, which may be recovered back by it.

“It must be taken as settled that when the United States becomes a party to what is called ‘commercial paper,’—by which is meant that class of paper which is transferable by endorsement or delivery, and in private parties is exempt,—is exempt in the hands of innocent holders from inquiry into the circumstances under which it is put into circulation—they are bound in any Court to whose jurisdiction they submit by the same principles that govern individuals in their relation to such paper.”

“Laches is not imputable to the Government in its character as sovereign by those subject to its dominion. Still a Government may suffer through the negligence of its officers. If it comes down from its position of sovereignty and enters the domain of commerce it submits itself to the same laws that govern individuals there. Thus, if it becomes the holder of a bill of exchange, it must use the same diligence to charge the drawers and endorsers that is required of individuals, and if it fails in this, its claim upon the parties is lost. Generally in respect to all the commercial transactions of the Government, if an officer specially charged with the performance of any duty and authorized to represent the Government in that behalf, neglects that duty and loss ensues, the Government must bear the consequences of his neglect. But this cannot happen until the officers specifically charged with the duty, if there be one, have acted or ought to have acted. As the Government can only act through its officers,

it may select for its work whomsoever it will; but it must have some representative authorized to act in all the emergencies of its commercial transactions. [141] If it fails in this it fails in the performance of its own duties and must be charged with the consequences that follow such omissions in the commercial world." (Cooke v. U. S. 91 U. S.)

If you find from the evidence in this case that M. P. McCoy, as Special Disbursing Agent of the United States, was authorized to draw checks upon the defendant bank and to launch them in commercial channels, then the United States occupies the same relation to such checks as an individual would under such circumstances, and the Government in such a case is responsible for the act of its agent in the same way that a private individual would be responsible for the act of its agent. If the Government clothed McCoy with the power to issue negotiable paper, then such negotiable paper became a bill of exchange, takes upon itself all the attributes of commercial paper generally, and the Government is bound by the same rules regulating commercial paper that operates upon an individual who issues negotiable paper.

IV.

It is a general rule that banks are required to know at their peril the genuineness of the signature of the payee of a check or draft, and if the checks in question had been made payable to the order of real persons then this rule would be controlling. But such is not the case with regard to fictitious payees. In the case of fictitious payees a bank is authorized

to pay the amount of the check or draft to the holder who presents same for payment, and is released and discharged, under the law regulating negotiable paper, from any duty to even investigate the genuineness of the endorsement of the payee. The holder of such an instrument would have the right to maintain an action upon such check in his own name as the [142] holder thereof, regardless of the fact that the check may have been payable to a specifically named payee, if such payee was known by the party who drew the instrument to be a nonexisting person at the time it was drawn.

V.

If you find from the evidence in this case that the defendant was guilty of negligence in paying the checks in question, and that the plaintiff was also guilty of negligence in failing to discover the forgeries or fraud and in not promptly notifying the defendant of the discovery of the forgeries or fraud, or, in other words, that both parties were guilty of negligence, then I instruct you that the law leaves the parties where they are, and compels the loss to lie where it falls. Where a loss has been suffered by reason of mutual neglect by plaintiff and defendant, the question always arises as to who shall bear that loss. Where there is negligence and contributory negligence the law will not concern itself with any controversy as to who should bear the loss, but leaves the loss to rest where it falls. In this case this rule leaves the loss upon the plaintiff and your verdict must be for the defendant, if you find that the defendant was guilty of negligence in paying the checks

and that the plaintiff was guilty of negligence in not discovering the fraud promptly and in not promptly notifying the defendant of the discovery of the fraud, and in not making a prompt demand for the repayment of the money claimed by it to have been paid out wrongfully and negligently by the defendant.

VI.

If you find from the evidence in this case that the defendant at stated intervals—monthly or quarterly—rendered statements of the condition and status of the McCoy account in [143] its bank to the plaintiff, and also sent to the plaintiff at such stated intervals the paid checks, and that the plaintiff has retained said checks and has not returned them to the defendant, then I instruct you that the account between the plaintiff and the defendant became stated. The rule between individuals having mutual running accounts is that an account stated becomes an account proved if the party to whom the statement is rendered fails to show errors or mistakes in it within a reasonable time. And if you find from the evidence that these statements of account were rendered by the defendant to the plaintiff and that no objection was made to them by the plaintiff within a reasonable time after the discovery of the fraud on the part of McCoy, or after it should have discovered the fraud by the exercise of reasonable diligence, then I instruct you that the plaintiff cannot recover in this action and your verdict must be for the defendant.

VII.

It appears from the uncontradicted testimony in this case that all of the checks in controversy were presented to the defendant for payment by other banks, and the defendant became obligated by business rules and banking rules to promptly report any ground for rejecting the checks or for reclaiming the amounts paid thereon.

It also appears that the defendant had mutual running accounts with such other banks and that mutual accounts were rendered by the defendant bank to such other banks who forwarded such checks for collection, and that the accounts between said defendant and such other banks became stated, and if there was no objection made by the defendant to the accounts of such other banks, the account would become proved and the defendant would [144] not be able to recover from such other banks the amount of money that it had paid to them on account of these checks, unless the defendant notified such other banks with reasonable promptness of the fraud and forgeries; and the reason for this rule is that by the delay of the defendant bank in notifying such other banks promptly of the fraud, such other banks would be precluded from their recourse over against the parties from whom they received the checks in question.

VIII.

It is contended by the plaintiff in this case that under the regulations of one of the executive departments of the United States Government, the defendant was only authorized to pay checks drawn

by McCoy payable to a particular person for an obligation owing to such person by the United States; that the defendant had knowledge, or was charged with knowledge, of such departmental regulation.

Even though it be true that the defendant bank had knowledge of such departmental regulation, still such fact, standing alone, would not justify a verdict at your hands in favor of the plaintiff, for the reason that this is a controversy growing out of commercial paper. The rights of the banks who acquired the ownership of these checks and presented them to the defendant bank for payment must be considered. Such presenting banks would not be charged with the knowledge of the defendant bank of such departmental regulation. When McCoy put such checks into circulation as commercial paper, the forwarding banks had a legal right to assume that they possessed all of the attributes of ordinary negotiable paper, and they would take the checks free of any specific instructions that might have been given by any department of the Government to the defendant bank undertaking to place a limitation upon their method of payment. [145]

It would be inequitable and unconscionable for the Government to authorize its agent, McCoy, to put into circulation negotiable paper which would be valid in the hands of an innocent holder, and which would give such innocent holder a right to enforce payment against the defendant bank and at the same time place such limitations upon the apparent authority of its agent as would render the defendant

bank liable to the United States if it paid such innocent holder the amount of the negotiable paper held by such holder.

Carrying this reasoning to its final analysis the legal effect of the plaintiff's position in this case is tantamount to the Government saying: "We have authorized McCoy to put into commercial channels paper possessing all of the characteristics and attributes of commercial negotiable paper, and an innocent holder of such paper can compel the defendant bank to pay the amount thereof to such holder; but if the defendant bank does pay the amount of such paper to the holder thereof, it is nevertheless liable to the Government because it did perform its duty in paying to such innocent holder the amount of the obligation represented by the paper in question." And if you find from the evidence that the plaintiff authorized McCoy to draw the checks in question, then the plaintiff cannot recover in this action and your verdict must be for the defendant.

IX.

If you find from the evidence in this case that the plaintiff discovered the fraud of McCoy in connection with the checks in question on the first of September, 1909, and failed to notify the defendant of the discovery of such forgeries and fraud until the 5th of March, 1910, then I instruct you that such delay in giving the notice of the forgeries and fraud and making the demand for the repayment was an unreasonable delay, and unexplained constitutes such negligence on the part of the plaintiff as [146] precludes its recovery in this action, unless you fur-

ther find that under all the facts and circumstances of this case such delay between the discovery of the fraud on or about the first of September, 1909, and the giving of the notice thereof and making the demand on the defendant on March 5th, 1910, was excusable on the part of the plaintiff.

XI.

If you find from the evidence in this case that the plaintiff failed to discover the fraud practiced by McCoy in issuing the checks in question through any lack of diligence on its part, or that it failed after the discovery of the fraud to promptly notify the defendant of its discovery, and to demand the return of the money out of which it claims to have been defrauded, with reasonable promptness, then I instruct you that the proof of actual damage to the defendant resulting from such delay or lack of diligence on the part of the plaintiff is not necessary to be shown by the defendant. The law presumes a damage, actual or potential. Proof of actual damage is not required. Proof of actual damage may not always be within the reach of the injured party, and, therefore, to confine the relief or remedy to cases of that sort falls far short of the actual grievance.

Notice, demand and return of the documents must be made within a reasonable time and any neglect would absolve the defendant from responsibility.

The same rule applies in a case of this kind as applies in the case of a failure on the part of the holder of negotiable paper to notify the endorsers thereon of its dishonor. A failure to protect a check or bill of exchange for nonpayment will release the

endorser and the endorser is not required to show [147] that he has been damaged actually by the failure to protest; the law in such a case presumes damage and such is the rule with regard to forged or fraudulent negotiable paper, such as is involved in this action; and if you find that the plaintiff negligently failed to discover the forgeries or failed to notify the defendant promptly after the discovery of the fraud, or failed to return the dishonored and fraudulent checks to the defendant immediately after the discovery of the fraud of McCoy, then I instruct you that the plaintiff cannot recover in this action, and your verdict must be for the defendant.

XII.

If you find from the evidence in this case that the plaintiff received the benefit of a portion of the money that McCoy succeeded in withdrawing from the defendant bank upon the checks in question, then I instruct you that, even though your verdict be for the plaintiff, you must deduct from the amount claimed by the plaintiff that portion of the fund which McCoy applied toward the payment of the legitimate obligations owing by the Government. [148]

*United States District Court, Western District of
Washington, Northern Division.*

No. 1933.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NATIONAL BANK OF COMMERCE, a Corpora-
tion,

Defendant.

Petition for New Trial.

Comes now the National Bank of Commerce, defendant herein, by Messrs. Kerr & McCord, its attorneys, and moves the Court for an order granting a new trial in the above-entitled cause and vacating and setting aside the verdict and judgment filed and entered herein, upon the following grounds, to wit:

I.

Error in law occurring at the trial of said cause, then and there excepted to by the defendant herein, which error consisted of granting motion of plaintiff for a directed verdict against the defendant at the conclusion of the introduction of testimony, and in refusing to vacate and set aside the verdict of the jury rendered in favor of the plaintiff and against the defendant in the sum of Fifteen Thousand One Hundred Twenty-nine and $81/100$ Dollars (\$15,129.81), and interest at the rate of six per cent from the 5th day of March, A. D. 1910.

II.

Upon the ground of newly discovered evidence

material for the defendant and which the defendant could not with reasonable diligence have discovered and produced at the trial.

This petition is based upon the records and files [149] herein and upon the stenographer's notes of the proceedings taken at the trial and upon the affidavits of J. A. Swalwell and E. S. McCord attached hereto.

KERR & McCORD,
Attorneys for Defendant.

Received a copy of the within petition this ——
day of May, A. D. 1914.

_____,
Attorneys for Plaintiff. [150]

*United States District Court, Western District of
Washington, Northern Division.*

No. 1933.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

NATIONAL BANK OF COMMERCE, a Corpora-
tion,
Defendant.

**Affidavit [of E. S. McCord in Support of Petition for
New Trial].**

State of Washington,
County of King,—ss.

E. S. McCord, being first duly sworn, deposes and says: That he is one of the attorneys for the defendant in the above-entitled action and files this affidavit

in support of the petition of defendant for a new trial in the above-entitled action and particularly in support of that portion of the petition based on the ground of newly discovered evidence.

That since the trial of the above-entitled action this affiant ascertained that M. P. McCoy, as Special Disbursing Agent and Examiner of Surveys for the United States referred to in the complaint and in the checks mentioned in said complaint, has executed a fidelity bond to the United States, with a Surety Company as surety thereon, conditioned for the return of all moneys belonging to the United States that came into his custody as such Special Disbursing Agent and Examiner of Surveys; that until such time neither the petitioner nor this affiant, nor any of the officers of petitioner knew that a bond had been given by the said M. P. McCoy; that immediately on obtaining this information affiant sent a telegram to the Honorable [151] Wesley L. Jones, United States Senator for the State of Washington, at Washington, D. C., requesting the said Jones to ascertain from the Interior Department at Washington whether the said McCoy had furnished a bond with a Surety Company as surety, and whether or not the Government had collected the amount of said bond from the surety of the said McCoy, and how much had been collected and when the collection was made. Said telegram was sent to the said Jones on the 25th day of May, 1914; that on the 26th day of May, 1914, affiant received a telegram from the said Jones from Washington, D. C., stating that the said M. P. McCoy, as such Agent of the United States,

had given a bond for \$3,000 to the United States of America for the return of the moneys that came into his hands as such agent belonging to the United States of America, and that the Surety Company had paid the amount of the bond to the United States, and that the amount so paid upon said bond was the sum of \$3,000; that said Jones acquired this information from the records and files in the Department of the Interior at Washington, D. C., and from the officials and employees of such Department; that affiant has not had an opportunity since the receipt of said telegram, to procure certified copies of the records of the Department of the Interior, but affiant alleges that the records of such Interior Department show that the sum of \$3,000 was paid by the surety of the said McCoy to apply upon the loss caused by the alleged defalcation of the said McCoy, and in part payment of the sums of money claimed by the plaintiff to have been embezzled by the said McCoy, and that said sum was applied upon the amount of the checks described in the complaint and in part payment of the amount of money claimed by the plaintiff to have been embezzled by the said McCoy, and in part payment of the amount sued upon by the plaintiff in the above-entitled action; that the said sum was paid by the said [152] surety of McCoy to the United States, with full knowledge on the part of the United States of all of the facts and circumstances set forth in the complaint, and that the action on the part of the United States in collecting said sum of three thousand dollars from the Surety Company amounted to a recognition on the part of the plaintiff

that the money sought to be recovered in this action was the money of the United States at the time of the embezzlement of McCoy, and that the plaintiff by collecting said sum from McCoy's surety recognized that the money so claimed to have been embezzled by McCoy belonged to the United States, and did not belong to the National Bank of Commerce at the time of such embezzlement.

That said evidence can be produced at a new trial of this action and is material to the issues set forth herein and conclusively establishes defendant's third affirmative defense to the effect that the United States, with full knowledge of all the facts, recognized, ratified and approved the action of the defendant in paying over the money represented by the checks in the complaint to the said M. P. McCoy, and that such payment amounted to an election on the part of the plaintiff to treat and consider the money claimed to have been embezzled by McCoy, as the money of the United States and not of the defendant.

That neither the defendant nor affiant could, with reasonable diligence, have produced the above evidence of payment by the Surety Company to the United States of said sum of \$3,000; that the records in the office of the Interior Department and of the Treasury Department of the United States of America, disclose that the United States of America, plaintiff above named, has collected from M. P. McCoy's official bond, the sum of \$3,000 for the embezzlement of the identical funds described and set forth in the complaint, and for the recovery of [153] which this action is being prosecuted; that

the said evidence is material in support of defendant's plea of payment and shows conclusively a payment of at least \$3,000 upon the amount sued upon; that upon a new trial of this action defendant will be able to produce documentary evidence and evidence of the officials of the Interior Department and Treasury Department of the United States; that the plaintiff in the year 1910, and long after the arrest and conviction of the said M. P. McCoy, charged with embezzling funds of the United States, collected from the surety on the official bond of the said M. P. McCoy the said sum of \$3,000, and that the same was in payment by the Surety Company of a part of the money sued for in this action, and will be able to establish by such evidence that the Government ratified the action of the defendant in paying out the money through the checks set forth in the complaint to the said McCoy, and that such payment by the Surety Company constituted an estoppel against the right of plaintiff to maintain this action; that neither the defendant nor this affiant knew that such evidence existed at the time of the trial of this action, and not knowing of its existence they could not have discovered it in time to produce it at the former trial of this action.

E. S. McCORD.

Subscribed and sworn to before me this 26th day of May, A. D. 1914.

[Seal]

S. H. KERR,

Notary Public in and for the State of Washington,
Residing at Seattle. [154]

*United States District Court, Western District of
Washington, Northern Division.*

No. 1933.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NATIONAL BANK OF COMMERCE, a Corpora-
tion,

Defendant.

**Affidavit [of J. A. Swalwell in Support of Petition
for New Trial].**

State of Washington,
County of King,—ss.

J. A. Swalwell, being first duly sworn, on oath
deposes and says: That he is the vice-president of
the National Bank of Commerce, the defendant in
the above-entitled action; that he has read the affida-
vit of E. S. McCord attached hereto, and that the
facts set forth therein are true to the best of his
knowledge and belief.

J. A. SWALWELL.

Subscribed and sworn to before me this 26th day
of May, A. D. 1914.

[Seal]

S. H. KERR,

Notary Public in and for the State of Washington,
Residing at Seattle. [155]

[Indorsed]: No. 1933—C. In the District Court of
the United States for the Western District of Wash-
ington, Northern Division. United States of Amer-

ica, Plaintiff, vs. The National Bank of Commerce, a Corporation, Defendant. Petition for New Trial. Filed in the U. S. District Court, Western Dist. of Washington. May 27, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [156]

*United States District Court, Western District of
Washington, Northern Division.*

No. 1933-C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NATIONAL BANK OF COMMERCE,

Defendant.

**Affidavit of E. S. McCord [in Support of Petition for
New Trial].**

State of Washington,
County of King,—ss.

E. S. McCord, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the defendant above named; that the said M. P. McCoy while acting as Special Disbursing Agent and Examiner of Surveys, executed a bond to the United States with the United States Fidelity & Guaranty Company of Baltimore, Maryland, as surety; that the full penalty of the bond in the sum of Three Thousand Dollars was paid by the Surety Company to the United States of America and said Company was released from liability upon said bond.

That during the years 1907, 1908 and 1909, said McCoy was employed at a salary, by the United

States, of \$270 per month, and that said sum of \$270 per month was paid by the United States to said McCoy monthly during said period; that after the discovery of the fraud perpetrated by the said McCoy heretofore set forth in the affidavits and in the records in this case, the United States of America charged back to McCoy on account of salary payment the sum of \$3,000, and then applied on the entire [157] account of McCoy with the Government the said sum of \$3,000; that the bond given by the said McCoy was for the faithful performance of his duties as Disbursing Agent and Examiner of Surveys and for the accounting to the Government of all the moneys that came into his hands as such agent; that the said bond did not provide that the surety should be responsible for any salary paid to the said McCoy by the United States which the said McCoy did not earn, and it is claimed by the plaintiff that McCoy did not earn his salary of \$270, and because of the failure of consideration they charge his account with the amount of said salary in the sum of \$3,000, which had theretofore been credited to his account; that the charge of said sum of \$3,000 to McCoy's account was not a charge for which the surety upon the bond was in any way responsible and that it was improperly and wrongfully charged to McCoy's account, and it was the duty of plaintiff to have applied the \$3,000 against the amount of money that the said McCoy wrongfully appropriated through the defendant bank. Affiant makes this affidavit on information and belief.

E. S. McCORD.

That to the best of his knowledge, information and belief, the total amount of the indebtedness of Marion P. McCoy was \$19,655.54; that there was repaid on December 23, 1909, by warrant No. 665, \$1,434.00 and by warrant No. 780, dated January 28, 1910, from the United States Fidelity and Guaranty Company, \$3,000, making a total credit of \$4,434, and leaving a balance due the United States of \$15,221.54.

That the said Marion P. McCoy was credited by the Treasury Department with the amounts above set forth prior to February 9, 1910, and the above-entitled action was commenced on December 22, 1910, for the sum of \$15,121.81, a sum less than the balance due on McCoy's account as above set forth, and amount due on forged checks set out in complaint.

[160]

This affidavit is based upon Certificate of Settlement No. 3166 of the Treasury Department, certified to by the Deputy Auditor of the Interior Department, and on a certified copy of a letter of June 8, 1914, from F. A. Reeve, Acting Solicitor of the Treasury.

G. P. FISHBURNE.

Subscribed and sworn to before me this 16th day of June, 1914.

[Seal]

FRANK L. CROSBY,

Clerk U. S. Dist. Court, Western Dist. of Washington. [161]

[Indorsed]: No. 1933-C. In the District Court of the United States for the Western District of Washington. United States of America, Plaintiff, vs. National Bank of Commerce, Defendant. Affidavit of G. P. Fishburne. Filed in the U. S. District Court, Western Dist. of Washington. June 16, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [162]

STATEMENT OF ACCOUNT AND CERTIFICATE OF SETTLEMENT
Marion P. McCoy, Examiner of Surveys and Special Disbursing Agent, 1905, to January 31, 1910, under bond dated September 5, 1905.

Certificate No. 3166. Interior Civil Fiscal Officers	Surveying the Public Lands, 1908.	Surveying the Public Lands, 1909.	Surveying the Public Lands, 1910.	Total.
Supplemental from April 21, 1908, to March 31, 1909. Account for Period Ended January 31, 1910.				
Balance due the United States, Certificate No. 2800, dated Nov. 24, 1909,		4,466.75		4,466.75
Accountable warrants: Warrant No. 82, dated July 6, 1909, Warrant No. 429, dated July 24, 1909, " " 854, " August 26, 1909,			1,500.00 1,400.00 1,400.00	4,300.00

Expenditures:

Disbursements, including salary, per diem allowance in lieu of subsistence, and expenses of M. P. McCoy, Examiner of Surveys, from April 21, 1908, to March 31, 1909, heretofore credited, now charged back and disallowed under revision of accounts and differences found by Comptroller of Treasury January 17, 1910,

as follows:

Disbursements, April 21, to June 30, 1908, Certificate No. 1711, charged back	2,055.54	
" July 1 to December 31, 1908, Certificate No. 1988, charged back,	7,587.85	
" January 1 to March 31, 1909, Certificate No. 2068, charged back,	1,245.40	
Balance now due the officer,	\$2,055.54	4,300.00
Total		19,655.54

2,055.54
8,833.25
19,655.54

CREDITS.

Balance due the officer, per Certificate No.

Treasury deposits: Repay

Warrant No. 665, dated December 23, 1909,

Warrant No. 780, dated January 28, 1910,

Balance now due the United States

Total

2,055.54	1,434.00	1,434.00
\$—, —	944.46	3,000.00
\$2,055.54	12,355.54	15,221.54
	13,300.00	19,655.54

Treasury Department,

Office of the Auditor for the Interior Department,

Washington, February 9, 1910.

I certify, that I have examined and settled the account of Marion P. McCoy, Examiner of Surveys and Special Disbursing Agent, General Land Office, with the United States, from September 13, 1905, to January 31, 1910, under his official bond dated September 5, 1905, including all former balances and suspensions, and find a balance due the United States of fifteen thousand two hundred twenty-one dollars and fifty-four cents under the several appropriations and headings of account as stated above.

\$15,221.54

The Secretary of the Treasury,
Division of Bookkeeping and Warrants.
Office of the Secretary of the Treasury
Division of Bookkeeping and Warrants

H. C. SHOBER,
Auditor,
By _____,
Deputy Auditor.

Entered in Ledger No. ———, page 128, 2/10/10, 19——. R.

[163]

No. 3166
Interior Civil Fiscal Officers
Certificate
of the

Auditor for the Interior Dept. on the account of Marion
P. McCoy, Examiner of Surveys and Special Disb.
Agent, for the period ended January 31, 1910.

Settled Feby. 9, 1910.

Feb. 10, 1910.

Div. of Bookkeeping and Warrants Posted by

Reg. Aud. Settlements

Personal Ledger

Transfer of Funds Register

Pay Register

Expenditures Ledger

Repay Register

Revenue Register

Revenue Ledgers

(Office Auditor Interior Dept. March 3, 1910.

A. M. 9/12/2/4 P. M.

N.

Rice

E. C. H.

Steele

H. C.

[163½]

*United States District Court, Western District of
Washington, Northern Division.*

No. 1933-C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE NATIONAL BANK OF COMMERCE, a
Corporation,

Defendant.

**Affidavit of G. P. Fishburne [in Opposition to
Petition for New Trial].**

Comes now the plaintiff in the above-entitled action, and reserving its right to object to the materiality of the evidence set forth by the affidavit of E. S. McCord as a ground for a new trial, makes the following affidavit:

United States of America,
Western District of Washington,
Northern Division,—ss.

G. P. Fishburne, being first duly sworn, deposes and says: That he is one of the attorneys for the plaintiff in the above-entitled action and files this affidavit to deny and explain the statements of E. S. McCord, without waiving his rights to object to the affidavit of E. S. McCord on the ground of its being incompetent, irrelevant and immaterial. That the amount collected from the surety on the bond of M. P. McCoy was credited on other indebtedness, not involved in the above-entitled action, and that to the best of the knowledge, information and belief of

affiant there has been no money whatever paid by the surety of the said McCoy on the amount sued upon in this action, or [164] any part thereof, and that the only money collected from the surety of McCoy was credited on an indebtedness of the said McCoy which is not involved in the above-entitled action.

That to the best of the knowledge, information and belief of this affiant neither E. S. McCord nor the persons from whom he received any information knew on what indebtedness the money paid by the surety company was applied, and that the affidavit of E. S. McCord is based on surmise and through not knowing of other indebtedness that had been incurred by McCoy to the plaintiff herein.

This affidavit is based on a telegram from F. A. Reeves, Acting Solicitor, Washington, D. C.

G. P. FISHBURNE.

Subscribed and sworn to before me this 26th day of June, 1914.

ED M. LAKIN,
Deputy Clerk U. S. Dist. Court, Western Dist. of
Washington. [165]

[Indorsed]: No. 1933-C. In the District Court of the United States for the Western District of Washington, Northern Division. United States of America, Plaintiff, vs. National Bank of Commerce, Defendant. Affidavit of G. P. Fishburne. Filed in the U. S. District Court, Western Dist. of Washington. June 26, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [166]

[Indorsed]: No. 1933-C. In the District Court of the United States for the Western District of Washington. United States of America, Plaintiff, vs. National Bank of Commerce, Defendant. Affidavit of G. P. Fishburne. Filed in the U. S. District Court, Western Dist. of Washington. Jun. 16, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy. [167]

[Affidavit of Rich. D. Lang.]

State of Maryland,
City of Baltimore,—ss.

Richard D. Lang, being duly sworn, deposes and says: That he is Vice-president of the United States Fidelity & Guaranty Company of Baltimore, Maryland, a corporation engaged in the general business of executing surety bonds. That the records of this company show that it did on or about the 5th day of September, 1905, execute as surety a bond running to the United States with Marion P. McCoy as principal, and conditioned upon the faithful performance of the duties of the said McCoy as Special Disbursing Agent and Examiner of Surveys for the United States in the States of Washington, Montana, and Idaho, said bond being in the penalty of Three Thousand Dollars (\$3,000).

Affiant further says that on or about the 16th day of November, 1909, the said United States notified this company that the said McCoy had defaulted, and called upon this company to reimburse the said United States for said defalcation of said McCoy to the amount of the penalty of said bond.

Affiant further says that the records of this company show that it did on or about the 5th day of January, 1910, pay to the said United States in full settlement of its liability under said bond aforementioned the sum of Three Thousand Dollars (\$3,000), for which it holds the receipt and release of the said United States of and from any liability against it on account of said bond.

RICHD. D. LANG,
Vice-president.

Subscribed and sworn to before me this 8th day of June, 1914.

A. S. PATRICK,
Notary Public. [168]

State of Maryland, Baltimore City,—Set:

I, Stephen C. Little, Clerk of the Superior Court of Baltimore City, do hereby certify, that A. D. Patrick, Esquire, before whom the annexed affidavit was made, and who has hereto subscribed his name, was at the time of so doing a Notary Public of the State of Maryland, in and for the City of Baltimore, residing in said City and State, duly commissioned and sworn, and authorized by law to administer oaths and take acknowledgments, or proofs of deeds to be recorded therein. I further certify that I am acquainted with the handwriting of the said Notary, and verily believe the signature to be his genuine signature.

In testimony whereof, I hereto set my hand and affix the seal of the Superior Court of Baltimore City,

the same being a Court of Record, this 8 day of June, 1914.

[Seal]

STEPHEN C. LITTLE,

Clerk of the Superior Court of Baltimore City.

[169]

[Indorsed]: No. 1933-C. United States of America vs. National Bank of Commerce. Affidavit of Richard D. Lang. Filed in the U. S. District Court, Western Dist. of Washington. June 22, 1914. Frank L. Crosby, Clerk. By E. M. L., Deputy.

[170]

[Affidavit of Abner H. Ferguson.]

District of Columbia, to wit:

Abner H. Ferguson, being first duly sworn, deposes and says: That he is a member of the bar of the City of Washington, District of Columbia, and is associated in practice with the firm of Ellis & Donaldson, of the same place.

Affiant further says that he has this day made an examination of certain records in the office of the Interior Department of the United States relating to the accounts between the United States and one, M. P. McCoy, lately in the employment of the Government in the capacity of a special disbursing agent and examiner of surveys for the United States in the States of Washington, Montana and Idaho, with offices in the City of Seattle, State of Washington.

Affiant further says that among the records so examined by him was the statement of the settlement of the account between the United States and the said M. P. McCoy, which said statement was made by the

officials or agents of the said United States, and purports to cover the period beginning September 13th, 1905, and ending January 3d, 1910; he further says upon information obtained from agents and employees of the United States at the said Interior Department that the Government claimed no defalcation on the part of the said McCoy until the period embraced in the fiscal year 1908, and that for said year said statement shows that the said McCoy wrongfully obtained from the United States the sum of Two Thousand and Fifty-five Dollars and Fifty-four Cents (\$2,055.54) of moneys belonging to the United States, which were deposited to the credit of the said McCoy in the National Bank of Commerce of Seattle, Washington. Affiant further says that said statement shows that for the fiscal year 1909, and at the end of said fiscal year the said McCoy was charged with the sum of [171] Four Thousand Four Hundred and Sixty-six Dollars and Seventy-five Cents (\$4,466.75), being the difference between the amount which had been placed to his credit as such disbursing agent, and the amounts which he claimed to have expended, and for which he had been given credit; said statement further shows that in addition to said sum last mentioned the said McCoy was charged with the sum of Seven Thousand Five Hundred and Eighty-seven Dollars and Eighty-five Cents (\$7,587.85), being the amount which the United States claimed the said McCoy had improperly obtained during the second and third quarter of said fiscal year of 1909, and he is further charged with the sum of One Thousand Two Hundred and

Forty-five Dollars and Ninety Cents (\$1,245.90), according to said statement, which is the amount the Government claimed he had improperly obtained during the last quarter of the fiscal year 1909, which makes a total amount claimed by said statement as due from said McCoy to the United States for said fiscal year of 1909 of Thirteen Thousand Three Hundred Dollars (\$13,300).

Said statement further shows that during the fiscal year 1910, and up until he was removed from office the Government had placed to his credit as such special disbursing agent the sum of Four Thousand Three Hundred Dollars (\$4,300), and that there was on deposit in the said National Bank of Commerce at Seattle to the credit of said McCoy, as such special disbursing agent at the time of his removal the sum of One Thousand Four Hundred and Thirty-four Dollars (\$1,434), which leaves a balance, in accordance with said statement, of Two Thousand Eight Hundred and Sixty-six Dollars (\$2,866), which the Government claimed had been improperly obtained from it by said McCoy.

Affiant further says that in accordance with the [172] said statement the said McCoy was indebted to the United States in the sum of Two Thousand and Fifty-five Dollars and Fifty-four Cents (\$2,055.54) for the fiscal year 1908, in the sum of Thirteen Thousand Three Hundred Dollars (\$13,300) for the fiscal year 1909, and in the sum of Two Thousand Eight Hundred and Sixty-six Dollars (\$2,866) for the year 1910, making a total indebtedness to it of Eighteen Thousand and Two Hundred and Twenty-one Dol-

lars and Fifty-four Cents (\$18,221.54).

Said statement further shows that the United States received on or about the 28th day of January, 1910, the sum of Three Thousand Dollars (\$3,000), which is represented to have been received by the Government from the United States Fidelity & Guaranty Company of Maryland, which was the surety on the bond given by the said McCoy to insure the faithful performance of his duties as such special disbursing agent, said sum of Three Thousand Dollars (\$3,000) so received from the surety on the bond of the said McCoy was applied by the United States as follows: The sum of Two Thousand and Fifty-five Dollars and Fifty-four Cents (\$2,055.54) was applied in payment of the amount claimed to be due from McCoy to the United States for the fiscal year 1908, as hereinbefore stated, and the sum of Nine Hundred and Forty-four Dollars and Forty-six Cents (\$944.46) was applied upon the indebtedness of Thirteen Thousand Three Hundred Dollars (\$13,300) claimed to be due for the fiscal year 1909, leaving a balance for said fiscal year as claimed by the United States from said McCoy of Twelve Thousand Three Hundred and Fifty-five Dollars and Fifty-four Cents (\$12,355.54).

Said statement further shows that the net indebtedness due from McCoy to the United States, after deducting the said sum of Three Thousand Dollars (\$3,000) from the total [173] indebtedness, as above set forth, is the sum of Fifteen Thousand Two

Hundred and Twenty-one Dollars and Fifty-four Cents (\$15,221.54).

ABNER H. FERGUSON.

Subscribed and sworn to before me this 8th day of June, 1914.

[Seal]

ANNA M. BOSSE,
Notary Public.

District of Columbia,—ss.

No. 4297.

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, the same being a Court of Record, having by law a seal, do hereby certify that Anna M. Bosse, before whom the annexed instrument in writing was executed, and whose name is subscribed thereto, was at the time of signing the same a notary public in and for the said District, residing therein, duly commissioned and sworn, and authorized by the laws of said District to take the acknowledgment and proof of deeds or conveyances of land, tenements, or hereditaments, and other instruments in writing, to be recorded in said District, and to administer oaths; and that I am well acquainted with the handwriting of said Notary Public and verily believe that the signature to said instrument and impression of seal thereon are genuine.

In witness whereof, I have hereunto subscribed my name and affixed the seal of said Court, at the City of Washington, D. C., the 9th day of June, A. D. 1914.

JOHN R. YOUNG,
Clerk. [174]

[Indorsed]: No. 1933-C. United States of America vs. National Bank of Commerce. Filed in the

U. S. District Court, Western Dist. of Washington.
June 22, 1914. Frank L. Crosby, Clerk. By Ed M.
Lakin, Deputy. Affidavit of Abner H. Ferguson.
[175]

**[Certificate of Settlement and Allowance of Bill of
Exceptions.]**

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 1933-C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE NATIONAL BANK OF COMMERCE, a Cor-
poration,

Defendant.

BILL OF EXCEPTIONS.

For the purpose of making the foregoing matters a part of the record herein, I, Jeremiah Neterer, Judge of the United States District Court for the Western District of Washington, Northern Division, now on this the 17th day of July, 1914, and within the term of this court during which the trial of the above-entitled cause was heard, do certify that this cause was tried before me, Judge of such court, with a jury, as aforesaid, and that the time for filing and serving said Bill of Exceptions having been enlarged and extended to and including the 18th day of July, A. D. 1914, by order of this Court, and pur-

suant to stipulation between the respective parties hereto.

And I do further certify that on this day came on for settlement and certification the Bill of Exceptions in this cause on the proposed Bill of Exceptions of defendant, counsel appearing for both parties, and the plaintiff by its attorney George P. Fishburne agreeing that said proposed Bill of Exceptions and exhibits therein set forth or referred to or hereto attached, be settled and certified as a true and correct Bill of Exceptions in said cause. [176]

And I further certify that having duly settled and hereby settling and allowing the foregoing Bill of Exceptions in said above-entitled action, do hereby certify the same and do hereby certify that this Bill of Exceptions and the exhibits marked Plaintiff's Exhibits "A," "B," "C," "D," "E," "F," "G," "H," "I," "J" and "K," and "L," therein set forth or referred to or hereto attached, together with defendant's identified Exhibit "1," offered at the trial and rejected by the Court, and the affidavits of E. S. McCord, Richard D. Lang and Abner H. Ferguson, offered in support of defendant's motion for a new trial, and the affidavits of George P. Fishburne, with the statement of account and certificate of settlement attached thereto, in opposition to said motion for a new trial, set forth or referred to or hereto attached, contains all the evidence, exhibits and other material facts, matters and proceedings in said cause not already a part of the record herein.

IN WITNESS WHEREOF, the undersigned has hereunto set his hand with his title of office, at

196 *The National Bank of Commerce vs.*

Seattle, in the Northern Division of the Western District of Washington, this the 17th day of July, A. D. 1914.

JEREMIAH NETERER,
District Judge of the United States for the Western District of Washington.

O.K.—G. P. FISHBURNE.

Copy of within Bill of Exceptions received, and due service of same acknowledged this 6th day of July, 1914.

G. P. FISHBURNE,
Attorney for Plaintiff.

[Indorsed]: Bill of Exceptions. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [177]

In the District Court of the United States for the Western District of Washington, Northern Division.

No. 1933.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

THE NATIONAL BANK OF COMMERCE,
Defendant.

Certificate [of U. S. District Judge Relative to Exhibits].

I, Jeremiah Neterer, Judge of the above-entitled court, do hereby certify that the foregoing accom-

panying documents are respectively Plaintiff's Exhibits "A," "B," "C," "D," "E," "F," and "G," "H," "I," "J," "K," and "L," and Defendant's Exhibit "1," offered in evidence on the trial of the above-entitled cause and rejected by the Court, and are respectively the exhibits mentioned in the Bill of Exceptions herewith, and of which the said exhibits herewith form a part.

I further certify that the said original exhibits are herewith transmitted to the United States Circuit Court of Appeals for the Ninth Circuit on the appeal of the above-entitled cause for the reason that the alleged forgery of the instruments constituting said Plaintiff's Exhibit "A" is an issue herein, and an inspection of said exhibit will be aidful to the said Circuit Court of Appeals, and for the further reason that said exhibits are difficult of reproduction.

Done in open court this the 17th day of July, A. D. 1914.

JEREMIAH NETERER,
United States District Judge, Western District of
Washington.

O.K.—G. P. FISHBURNE,
Attorney for Plaintiff.

[Indorsed]: Certificate. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. July 17, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [178]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 1933.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE NATIONAL BANK OF COMMERCE OF
SEATTLE,

Defendant.

Assignment of Errors.

Comes now the defendant, the National Bank of Commerce of Seattle, and files the following Assignments of Error upon which it will rely for the prosecution of its Writ of Error in the above-entitled cause:

I.

The Court erred in granting plaintiff's motion for a directed verdict in favor of the plaintiff and against the defendant for the sum of \$15,129.81, with interest at the rate of 6% per annum from the 5th day of March, 1910, and in instructing and directing the jury to render a verdict in favor of the plaintiff and against the defendant in such amount or at all.

II.

The Court erred in receiving and filing such verdict so returned by the jury under the direction of the Court.

III.

The Court erred in entering final judgment in

favor of the plaintiff and against the defendant.

IV.

The Court erred in refusing to submit the case to the jury for its determination.

V.

The Court erred in refusing to submit the case to the jury and [179] to give defendant's first requested instruction, which instruction is as follows:

"The defendant in this case has alleged as an affirmative defense that the money sued for in this action, whether passing through the hands of fictitious payees or otherwise, was expended and used by M. P. McCoy in payment of claims against the United States created by said McCoy under authority of the United States and in pursuance of the laws of the United States and in payment of claims that the said McCoy, as Special Examiner of Surveys, was authorized to make and pay on behalf of the United States.

If you find from the evidence in this case that the money sued upon in this action was withdrawn from the defendant bank and was expended by McCoy in payment of claims against the United States which McCoy as Special Examiner of Surveys was authorized to pay on behalf of the United States, then I instruct you that the plaintiff cannot recover in this action for the reason that the United States in such case would have suffered no damage.

I further instruct you that if you find that any portion of the money sued for in this action was so expended by the said McCoy in payment of

legitimate claims against the United States created by him and which he had a right to create, then I instruct you that the plaintiff cannot recover for such portion of the sum sued upon as was so expended by the said McCoy."

VI.

The Court erred in refusing to give defendant's second requested instruction, which instruction is as follows:

"It is contended by the plaintiff that there is due the United States from the defendant bank the sum of \$15,129.81, for moneys fraudulently withdrawn from the defendant bank by M. P. McCoy. The defendant, among other things, contends that in any event it is entitled to credit upon the sum of \$5,718, being the amount that the said McCoy was charged, in an indictment by the United States against him, with embezzling, upon which indictment the said M. P. McCoy was convicted and sentenced to the penitentiary for a term of years.

If you find from the evidence in this case that the said sum of \$5,718, referred to in said indictment and introduced in evidence in this case, constituted a portion of the \$15,129.81 sued for in this action, then I instruct you that the plaintiff cannot recover for the said sum of \$5,718, and such sum must be deducted from the total amount of \$15,129.81, for the reason that the judgment of conviction against the said M. P. McCoy [180] upon said indictment conclusively established the fact that such sum of

\$5,718 was the money and property of the United States, and by filing such indictment against the said McCoy for such sum and procuring a conviction thereon, the United States elected to treat said sum mentioned in said indictment as its own property, and thereby waived its claim for said sum against the defendant bank.”

VII.

The Court erred in refusing to give defendant's fourth requested instruction, which instruction is as follows :

“If you find from the evidence in this case that the proof of the allegations of plaintiff's complaint rest conclusively upon the testimony of M. P. McCoy, and if you find that the said M. P. McCoy has been convicted of a felony and sent to the penitentiary, and has served a term therein by reason of such conviction, then I instruct you that the said M. P. McCoy does not stand before you as an unimpeached witness, and it will be within your province to discredit his entire testimony, unless it is corroborated by other facts and circumstances in the case. The jury is not required to believe the testimony of any witness and particularly the testimony of a self-confessed and convicted felon, even though such testimony be uncontradicted, unless you believe that the testimony given by such witness be true. The fact that the testimony of a witness is not contradicted does not necessarily require you to believe such testimony; and if in this case you discredit and fail to believe the

testimony of the said M. P. McCoy, then I instruct you that you have a right to disregard his testimony altogether, except in so far, as it may be corroborated by other facts and circumstances, or the evidence of other and credible witnesses in the case; and if you find from the evidence that you must disregard the testimony of the said McCoy, then I instruct you that your verdict must be for the defendant and against the plaintiff."

VIII.

The Court erred in refusing to give the fifth instruction requested by defendant, which instruction is as follows:

"Gentlemen of the jury, in weighing the testimony of the witness M. P. McCoy, I instruct you that you have a right to apply to his testimony all the usual tests that you apply in the conduct of the ordinary affairs of life; and I further instruct you that it is your duty to take into consideration the fact, if you find it to be a fact, that the said M. P. McCoy was in September, 1909, indicted for embezzlement, and upon such indictment was convicted of the crime of embezzlement. The law permits the defendant to introduce evidence showing, or tending to show, that any witness has been convicted of a felony for the purpose of affecting the credibility of such witness. If you find from the evidence in this case that M. P. McCoy has been convicted of a felony, you should take this fact into consideration in weighing his testimony and

in determining whether it is entitled to be believed by you; and if you find from such conviction of such felony that his testimony is unworthy of belief, and that his testimony is not corroborated by the facts and circumstances in this case, then I instruct you that the plaintiff cannot recover in this action, and your verdict must be for the defendant." [181]

IX.

The Court erred in refusing to give the sixth instruction requested by defendant, which instruction is as follows:

"If you find from the evidence in this case that at the time the account was opened in the National Bank of Commerce by the United States in the name of M. P. McCoy, Examiner of Surveys and Special Disbursing Agent, the plaintiff instructed the defendant bank to honor all checks drawn upon said account by the said M. P. McCoy, as such Examiner of Surveys and Special Disbursing Agent, without limitation or condition, then I instruct you that defendant had the legal right to honor any checks so drawn by said McCoy regardless of the fact as to whether the payees were fictitious or otherwise, and if you find that such special instructions were given at the time of the opening of said account, then I instruct you that such special instructions would justify the defendant bank in failing, if it did fail, to follow the general instructions issued by the Treasury Department of the United States."

X.

The Court erred in refusing to give the seventh instruction requested by defendant, which instruction is as follows:

“If you find from the evidence in this case that the United States, by its properly authorized officers, ratified and approved the actions of the said M. P. McCoy in drawing the checks referred to in the complaint, and ratified the action of the defendant bank in paying such checks, if you find that it did pay them, and in charging the amounts of such checks to the account of the defendant, then I instruct you that such ratification and approval by the United States would estop the plaintiff from a recovery in this action, and your verdict would be for the defendant.”

XI.

The Court erred in refusing to give the eighth instruction requested by defendant, which instruction is as follows:

“If you find from the evidence in this case that the said M. P. McCoy was authorized to expend such portion of the money deposited to his account in the defendant bank for legitimate purposes in connection with the expense attendant upon the examination of Surveys as he deemed expedient, then I instruct you that the burden rests upon the plaintiff in this case to establish by a preponderance of the evidence the fact that the money involved in this controversy was used by the said McCoy for purposes other

than his legitimate expenses; and the burden also rests upon the Government to establish by a preponderance of the evidence what portion of the amount involved in this controversy was improperly expended by the said McCoy.” [182]

XII.

The Court erred in refusing to permit the defendant to introduce in evidence Defendant’s Exhibit No. 1, which exhibit contained a transcript of the various statements furnished by the defendant at monthly intervals during the period of time the checks described in the complaint were issued by M. P. McCoy and paid by the defendant bank, and further showing the condition of the account of M. P. McCoy, Examiner of Surveys and Special Disbursing Agent in the defendant’s bank.

XIII.

The Court erred in refusing to permit the witness R. S. Walker to testify as to the course of dealing between the National Bank of Commerce and the plaintiff relating to the transactions involved in the issuance and payment of the checks referred to in the complaint, and to testify as to facts and circumstances in support of defendant’s third affirmative defense, i. e., that the plaintiff had ratified and approved the payment of said checks and had recognized that the money represented by said checks and claimed to have been appropriated by said McCoy was in fact the money and property of the plaintiff.

XIV.

The Court erred in refusing to permit the defendant to introduce evidence in support of its second

affirmative defense, as set forth in its answer.

XV.

The Court erred in sustaining the demurrer of the plaintiff to the first affirmative defense set forth in defendant's original answer.

XVI.

The Court erred in refusing to permit the defendant to [183] introduce evidence in support of its first affirmative defense set forth in its amended answer.

XVII.

The Court erred in denying defendant's motion for a new trial.

WHEREFORE, this defendant prays that the judgment of the United States District Court for the Western District of Washington, Northern Division, entered in the above-entitled cause, in favor of the plaintiff and against the defendant, be reversed.

KERR & McCORD,

Attorneys for Defendant.

Copy of within Assn. of Errors received and due service of same acknowledged this 17th day of July, 1914.

G. P. FISHBURNE,

Attorney for Plaintiff.

[Indorsed]: Assignment of Errors. Filed in the U. S. District Court, Western District of Washington, Northern Division, July 17, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [184]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 1933-C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE NATIONAL BANK OF COMMERCE, a Cor-
poration,

Defendant.

Petition for Writ of Error.

The defendant above named, the National Bank of Commerce of Seattle, feeling itself aggrieved by the judgment of the Court made and entered in this cause on the 25th day of May, A. D. 1914, comes now, by Kerr & McCord, its attorneys, and petitions this Court for an order allowing it to prosecute a Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit, under and in accordance with the laws of the United States in that behalf made and provided and that an order be made fixing the amount of security which defendant shall give and furnish upon said Writ of Error, conditioned as required by law as in cases where a supersedeas and stay of execution are desired.

Dated this 17th day of July, A. D. 1914.

KERR & McCORD,

Attorneys for Defendant.

Copy of within Petition for Writ of Error re-

ceived and due service of same acknowledged this 17th day of July, 1914.

G. P. FISHBURNE,
Attorney for Plaintiff.

[Indorsed]: Petition for Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. July 17, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [185]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 1933-C.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

NATIONAL BANK OF COMMERCE, a Corpora-
tion,

Defendant.

**Order Allowing Writ of Error and Fixing Amount of
Cost and Supersedeas Bond.**

Upon motion of Kerr & McCord, attorneys for the defendant, and upon the filing of a petition for a Writ of Error and an Assignment of Errors, it is

Ordered that a Writ of Error be and the same is hereby allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit the judgment heretofore entered herein in favor of the plaintiff and against the defendant on the 25th day of May, A. D. 1914.

It is further ordered that upon the defendant, the National Bank of Commerce, filing with the clerk of this Court a good and sufficient bond in the sum of \$22,000, with good and sufficient security that the National Bank of Commerce, defendant, shall prosecute said Writ of Error to effect and answer all damages and costs, and pay the amount of the judgment including just damages for delay, together with costs and interest on the appeal if the defendant fails to make its plea good, said bond to be approved by the Court, and upon its approval all further proceedings, [186] in this court be hereby suspended and stayed until the determination of the Writ of Error by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated Seattle, Wn., July 17, 1914.

JEREMIAH NETERER,

Judge.

O. K.—G. P. FISHBURNE.

Copy of within Order received and due service of same acknowledged this 17th day of July, 1914.

G. P. FISHBURNE,

Attorney for Plaintiff.

[Endorsed]: Order Allowing Writ and Fixing Amount of Cost and Supersedeas Bond. Filed in the U. S. District Court, Western District of Washington, Northern Division, July 17th, 1914. Frank L. Crosby, Clerk. Ed. M. Lakin, Deputy. [187]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 1933.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE NATIONAL BANK OF COMMERCE,

Defendant.

Cost and Supersedeas Bond.

Know All Men by These Presents, that we, the National Bank of Commerce of Seattle, a corporation, as principal, and R. R. Spencer and M. Thomsen, as sureties, are held and firmly bound unto the United States of America, the plaintiff above-named, in the sum of Twenty-two Thousand Dollars (\$22,000) to be paid to the United States of America, for the payment of which well and truly to be made we bind ourselves and each of us jointly and severally, and our and each of our executors, administrators, representatives, successors and assigns firmly by these presents.

Sealed with our seals and dated this the 17th day of July, A. D. 1914.

Whereas, the defendant above-named has sued out a Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit to review and reverse the judgment entered by the above-named Court in the above-entitled case in favor of the plaintiff and against the defendant in the sum of \$15,-

129.81, with interest thereon from the 5th day of March, A. D. 1910, at the rate of 6% per annum, or \$3,832.88, making a total of \$18,962.69, together with a judgment for costs and disbursements in favor of the plaintiff and against the defendant in the sum of \$207.44.

Now, therefore, the condition of this obligation is such [188] that if the above-named defendant shall prosecute said Writ of Error to effect, the answer all damages and costs and pay the amount of said judgment, including just damages for delay, and costs and interest on the appeal, if the defendant shall fail to make its plea good, then this obligation shall be void; otherwise shall be and remain in full force and effect.

NATIONAL BANK OF COMMERCE OF
SEATTLE,

[Seal]

By G. F. CLARK,

Cashier.

R. R. SPENCER,

M. THOMSEN. [189]

State of Washington,

County of King,—ss.

R. R. Spencer and M. Thomsen, being first duly sworn, each for himself deposes and says:

That he is one of the sureties who executed the foregoing bond, and that he is worth the sum of \$22,000 over and above all his just debts and liabilities in statutory separate property situated in the State of Washington, not by law exempt from sale on execution, and that he is not a State, county, or city

official, nor an attorney or counselor at law.

R. R. SPENCER.

M. THOMSEN.

Subscribed and sworn to before me this the 17th day of July, A. D. 1914.

[Seal]

J. N. IVEY,

Notary Public in and for the State of Washington,
Residing at Seattle.

Approved: July 17, 1914.

JEREMIAH NETERER,

Judge.

O. K.—G. P. FISHBURNE.

[Endorsed]: Cost and Supersedeas Bond. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. July 17, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [190]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 1933—C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE NATIONAL BANK OF COMMERCE,

Defendant.

Writ of Error (Copy).

United States of America,
Ninth Judicial Circuit,—ss.

To the Honorable Judge of the District Court of the
United States for the Western District of Wash-
ington; Greeting:

Because in the records and proceedings, as also in the rendition of the judgment upon a plea in said District Court before you, or some of you, between the United States of America, plaintiff, and The National Bank of Commerce, a corporation, defendant, a manifest error to the great damage of the said The National Bank of Commerce, as by its complaint, answer and assignment of errors appears:

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in that behalf, do command you if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same to the United States Circuit Court of Appeals for the Ninth Circuit, together with this Writ, so that you have the same at San Francisco, California, on the 16th day of August, 1914, next, in the said United States Circuit Court of Appeals to be then and there held, that the records and proceedings aforesaid being inspected the said United States Circuit Court of appeals may cause [191] further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

Witness the Honorable EDWARD WHITE, Chief Justice of the Supreme Court of the United States, this the 17th day of July, 1914, and in the 139th year of the Independence of the United States.

JEREMIAH NETERER,

Judge.

[Seal] Attest: FRANK L. CROSBY,
Clerk of the United States District Court for the
Western District of Washington.

Due and legal service of the within Writ of Error and receipt of a copy thereof is hereby admitted this the 17th day of July, 1914.

G. P. FISHBURNE,
Attorney for Plaintiff.

United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the annexed Writ of Error on the plaintiff herein by handing to and leaving a true and correct copy thereof with Hon. Clay Allen, United States District Attorney for the Western District of Washington, the attorney for the United States of America, plaintiff in the above-entitled cause, personally, at Seattle, Washington, in said District, on the —— day of July, A. D. 1914.

United States Marshal. [192]

[Indorsed]: No. 1933—C. In the District Court of the United States for the Western District of Washington, Northern Division. United States of America, Plaintiff, vs. The National Bank of Commerce, Defendant. Writ of Error. Filed in the

U. S. District Court, Western Dist. of Washington,
Northern Division. July 17, 1914. Frank L.
Crosby, Clerk. By Ed M. Lakin, Deputy. Kerr &
McCord, 1309-16 Hoge Building, Seattle, Wash., At-
torneys for Defendant. [193]

*United States District Court, Western District of
Washington, Northern Division.*

No. 1933—C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE NATIONAL BANK OF COMMERCE, a Cor-
poration,

Defendant.

[Citation on Writ of Error (Copy).]

United States of America,
Ninth Judicial Circuit,—ss.

To the United States of America, and to Clay Allen,
United States District Attorney for the West-
ern District of Washington, and to G. P. Fish-
burne, Assistant United States District Attorney
for the Western District of Washington, North-
ern Division, Attorneys for the United States of
America: Greeting:

You are hereby cited and admonished to be and
appear at a session of the United States Circuit
Court of Appeals for the Ninth Circuit, to be holden
at the City of San Francisco, in said Circuit, on the
16th day of August, A. D. 1914, pursuant to a Writ

of Error filed in the office of the Clerk of the District Court for the Western District of Washington, wherein the National Bank of Commerce of Seattle is plaintiff in error and defendant herein, and the United States of America is defendant in error and plaintiff herein, to show cause if any there be, why the judgment rendered against the plaintiff in error, as in said Writ of Error mentioned, [194] should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD WHITE, Chief Justice of the Supreme Court of the United States, this the 17th day of July, A. D. 1914.

[Seal]

JEREMIAH NETERER,

Judge.

United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the annexed citation on the United States of America, plaintiff in the above-entitled action, by handing to and leaving a true and correct copy thereof with the Hon. Clay Allen, United States District Attorney for the Western District of Washington, one of the attorneys for the plaintiff in the above-entitled cause, personally at Seattle, in said District, on the — day of July, A. D. 1914.

United States Marshal.

Copy of within Citation received and due service of same acknowledged this 17th day of July, 1914.

G. P. FISHBURNE,
Attorney for Plaintiff.

No. 1933—C. In the District Court of the United States for the Western District of Washington, Northern Division. United States of America, Plaintiff versus The National Bank of Commerce, Defendant. Citation in Error. Filed in the United States District Court Western District of Washington, July 17, 1914, Frank L. Crosby, Clerk, Ed Lakin, Deputy. Kerr & McCord, 1309-16 Hoge Building, Seattle, Washington, Attys. for Defendant. [195]

*In the District Court of the United States for the
Western District of Washington, Northern Division.*

No. 1933—C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE NATIONAL BANK OF COMMERCE, a Corporation,

Defendant.

Order to Transmit Original Exhibits.

Now, on this, the 17th day of July, A. D. 1914, upon motion of Kerr & McCord, attorneys for the defendant, and for sufficient cause appearing, it is

ORDERED, that the plaintiff's original exhibits "A" and "G," which were introduced in evidence on the trial of the above-entitled cause, and also Plaintiff's Exhibits "B," "C," "D," "E," and "F," "G," "H," "I," "J," "K" and "L," which were offered in evidence, and Defendant's Exhibit "1," which was offered in evidence on the trial of the above-entitled

cause, and rejected by the Court, be by the Clerk of this Court forwarded to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, there to be inspected and considered, together with the transcript of the record on appeal in this cause.

JEREMIAH NETERER,

District Judge of the United States for the Western District of Washington.

O. K.—G. P. FISHBURNE.

[Indorsed]: Order to Transmit Original Exhibits. Filed in the U. S. District Court, Western District of Washington, Northern Division. July 17, 1914. Frank L. Crosby, Clerk. Ed M. Lakin, Deputy. [196]

United States District Court, Western District of Washington, Northern Division.

No. 1933—C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE NATIONAL BANK OF COMMERCE,

Defendant.

Waiver [of Printing of Record Under Act of February 13, 1911, and Direction that Record be Printed by Clerk of Appellate Court].

We hereby waive the printing of the record in the above-entitled cause upon the Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit, and request that the same be forwarded to

said Circuit Court of Appeals at San Francisco, with the request that it be printed there.

KERR & McCORD,
Attorneys for Defendant.

[Indorsed]: Waiver. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. July 21, 1914. Frank L. Crosby, Clerk. E. M. Lakin, Deputy. [197]

*In the District Court of the United States for the
Western District of Washington, Northern Di-
vision.*

No. 1933-C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE NATIONAL BANK OF COMMERCE,

Defendant.

Praeceptum for Record.

To the Clerk of the Above-entitled Court:

You will please prepare at once transcript of the record in the above-entitled cause on Writ of Error to the United States Circuit Court of Appeals for the Ninth Circuit, and forward the same to the clerk of that Court, including in the transcript the following papers necessary to the determination of the question to be passed on by said Circuit Court of Appeals:

1. Complaint filed December 22, 1910.
2. Answer filed February 11, 1911.

3. Plaintiff's demurrer to answer filed February 23, 1911.
4. Oral decision on demurrer to affirmative defense, filed September 21, 1911.
5. Order sustaining demurrer to first affirmative defense, and overruling as to second, filed September 21, 1911.
6. Amended answer, filed March 12, 1912.
7. Reply to amended answer, filed March 13, 1912.
8. Stipulation for extension of time for filing bill of exceptions and orders based thereon, filed and entered between the 19th day of May, 1914, and the 17th day of July, 1914. [198]
9. Bill of exceptions.
10. Certificate certifying Plaintiff's Exhibits "A," "B," "C," "D," "E," "F," "G," "H," "I," "J," "K," "L," and "M," and Defendant's Exhibit "1."
11. Send plaintiff's original Exhibits "A," "B," "C," "D," "E," "F," "G," "H," "I," "J," "K," "L," and "M," and Defendant's Exhibit "1."
12. Assignment of Error, filed July 17th, 1914.
13. Petition for Writ of Error, filed July 17th, 1914.
14. Order allowing Writ of Error. Cost and super-sedeas bond.
15. Writ of Error filed July 17, 1914.
16. Citation with acceptance of service, filed July 17th, 1914.
17. Send original Writ of Error, as well as include copy in transcript.

18. Send original Citation, as well as include copy in transcript.
19. This Praeceptum.
20. All endorsements of any kind whatsoever appearing on any of the papers named in this praecipe.
21. The Judgment entered in favor of the plaintiff and against the defendant.

KERR & McCORD,
Attorneys for Defendant.

[Indorsed]: Praeceptum for Record. Filed in the U. S. District Court, Western District of Washington, Northern Division. July 21, 1914. Frank L. Crosby, Clerk. By E. M. Lakin, Deputy. [199]

*In the District Court of the United States for the
Western District of Washington, Northern
Division.*

No. 1933.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

NATIONAL BANK OF COMMERCE, a Corpora-
tion,

Defendant.

**Certificate of Clerk U. S. District Court to Transcript
of Record, etc.**

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States

District Court, for the Western District of Washington, do hereby certify the 199 typewritten pages, numbered from 1 to 199, inclusive, to be a full, true, correct, and complete copy of so much of the record, papers and other proceedings in the above and foregoing entitled cause as are necessary to the hearing of said cause on Writ of Error therein in the United States Circuit Court of Appeals for the Ninth Circuit, and as is stipulated for by counsel of record herein, as the same remain of record and on file in the office of the Clerk of said District Court, and that the same, together with the originals of Plaintiff's Exhibits "A," "B," "C," "D," "E," "F," "G," "H," "I," "J," "K" and "L," and Defendant's Exhibit 1, which said original exhibits are transmitted herewith pursuant to the order of Court so directing, constitute the record on return to said Writ of Error from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred [200] and paid in my office by or on behalf of the Plaintiff in Error for making record, certificate or return of the typewritten transcript of record issued to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fee (Sec. 828 R. S. U. S. as amended
by Sec. 6, Act of March 2, 1905) for mak-

ing record, certificate or return—467	
folios at 30c.....	\$140.10
Certificate of Clerk to transcript of record—	
3 folios at 30c.....	.90
Seal to said Certificate.....	.40
Certificate of Clerk to Original Exhibits—	
3 folios at 30c.....	.90
Seal to said Certificate.....	.40
	<hr/>
	\$142.70

I hereby certify that the above cost for preparing and certifying record amounting to \$142.70 has been paid to me by Messrs. Kerr & McCord, attorneys for plaintiff in error.

I further certify that I hereto attach and herewith transmit the original Writ of Error and original Citation issued in this cause.

IN WITNESS WHEREOF I have hereto set my hand and affixed the seal of said District Court at Seattle, in said District, this 4th day of August, 1914.

[Seal]

FRANK L. CROSBY,

Clerk.

By Ed M. Lakin,

Deputy. [201]

*United States District Court, Western District of
Washington, Northern Division.*

No. 1933—C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE NATIONAL BANK OF COMMERCE,

Defendant.

Writ of Error [Original].

United States of America,
Ninth Judicial Circuit,—ss.

To the Honorable Judge of the District Court of the
United States for the Western District of Wash-
ington, Greeting:

Because in the records and proceedings, as also in
the rendition of the judgment upon a plea in said
District Court before you, or some of you, between
the United States of America, Plaintiff, and The
National Bank of Commerce, a corporation, defend-
ant, a manifest error to the great damage of the
said The National Bank of Commerce, as by its com-
plaint, answer and assignment of error appears:

We being willing that error, if any hath been,
should be duly corrected and full and speedy justice
done to the parties aforesaid in that behalf, do com-
mand you if judgment be therein given, that then
under your seal, distinctly and openly, you send the
record and proceedings aforesaid, with all things
concerning the same to the United States Circuit

Court of Appeals for the Ninth Circuit, together with this Writ, so that you have the same at San Francisco, California, [202] on the 16th day of August, 1914, next, in the said United States Circuit Court of Appeals, to be then and there held, that the records and proceedings aforesaid being inspected, the said United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD WHITE, Chief Justice of the Supreme Court of the United States, this the 17th day of July, 1914, and in the 139th year of the Independence of the United States.

JEREMIAH NETERER,

Judge.

[Seal] Attest: FRANK L. CROSBY,
Clerk of the United States District Court for the
Western District of Washington.

Due and legal service of the within Writ of Error and receipt of a copy thereof is hereby admitted this the 17th day of July, 1914.

G. P. FISHBURNE,

Attorney for Plaintiff. [203]

United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the annexed Writ of Error on the plaintiff herein by handing to and leaving a true and correct copy thereof with Hon. Clay Allen, United States District Attorney for the Western District of Washington, the

attorney for the United States of America, plaintiff in the above-entitled cause, personally, at Seattle, Washington, in said District, on the —— day of July, A. D. 1914.

United States Marshal. [204]

[Endorsed]: No. 1933-C. In the District Court of the United States for the Western District of Washington, Northern Division. United States of America, Plaintiff, vs. The National Bank of Commerce, Defendant. Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. July 17, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [205]

[Citation on Writ of Error (Original).]

United States District Court, Western District of Washington, Northern Division.

No. 1933-C.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE NATIONAL BANK OF COMMERCE, a Corporation,

Defendant.

United States of America,
Ninth Judicial Circuit,—ss.

To the United States of America, and to CLAY ALLEN, United States District Attorney for the Western District of Washington, and to G.

P. FISHBURNE, Assistant United States District Attorney for the Western District of Washington, Northern Division, Attorneys for the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco in said Circuit, on the 16th day of August, A. D. 1914, pursuant to a Writ of Error filed in the office of the Clerk of the District Court for the Western District of Washington, wherein The National Bank of Commerce of Seattle is plaintiff in error and defendant herein, and the United States of America is defendant in error and plaintiff herein, to show cause, if any there be, why the judgment rendered against the plaintiff in error, as in said Writ of Error mentioned, [206] should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable EDWARD WHITE, Chief Justice of the Supreme Court of the United States, this the 17th day of July, A. D. 1914.

[Seal]

JEREMIAH NETERER,
Judge.

United States of America,
Western District of Washington,—ss.

I hereby certify and return that I served the annexed citation on the United States of America, plaintiff in the above-entitled action by handing to and leaving a true and correct copy thereof with the Hon. Clay Allen, United States District Attorney for the Western District of Washington, one of the at-

torneys for the plaintiff in the above-entitled cause, personally, at Seattle, in said District, on the —— day of July, A. D. 1914.

United States Marshal. [207]

Copy of within Citation received and due service of same acknowledged this 17th day of July, 1914.

G. P. FISHBURNE,
Attorney for Plaintiff.

[Endorsed]: No. 1933-C. In the District Court of the United States for the Western District of Washington, Northern Division. United States of America, Plaintiff, vs. The National Bank of Commerce, Defendant. Citation in Error. Filed in the U. S. District Court, Western Dist. of Washington, Northern Division. Jul. 17, 1914. Frank L. Crosby, Clerk. By Ed M. Lakin, Deputy. [208]

[Endorsed]: No. 2458. United States Circuit Court of Appeals for the Ninth Circuit. The National Bank of Commerce, a Corporation, Plaintiff in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Received and filed August 7, 1914.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.